

Town of Eagar
P.O. Box 1300
Eagar, AZ 85925

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LEASE

Dated as of April 8, 2002

Between

BASHAS' INC.,
an Arizona corporation
("Lessee")

and

EAGAR MUNICIPAL PROPERTY CORPORATION,
an Arizona non-profit corporation
("Lessor")

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Exhibit "A"	-	Site plan
Exhibit "B"	-	Legal Description of the Shopping Center
Exhibit "C"	-	Form of Non-Disturbance and Attornment Agreement – Real Property
Exhibit "C-1"		Form of Non-Disturbance and Attornment Agreement – Lessor's Property
Exhibit "D"	-	Schedule B from Preliminary Title Report
Exhibit "E"	-	Intentionally Deleted
Exhibit "F"	-	Intentionally Deleted
Exhibit "G"	-	Lessor's Subordination & Waiver
Exhibit "H"	-	Lessor's Property

LEASE

THIS LEASE made as of April 8, 2002, between **EAGAR MUNICIPAL PROPERTY CORPORATION**, an Arizona non-profit corporation, hereinafter called "**Lessor**" and **BASHAS' INC.**, an Arizona corporation, hereinafter called "**Lessee**".

WITNESSETH:

1. **PREMISES**

Lessor hereby demises to Lessee and Lessee hereby leases from Lessor, for the Term and subject to the agreements herein set forth, the premises designated as "**market**", on the site plan attached hereto as **Exhibit "A"** with a building which contains approximately 24,000 square feet (hereinafter called the "**Premises**") together with a non-exclusive easement to use in common with others the Common Areas (as hereinafter defined) and all rights of way, alleys, easements and all other appurtenances, rights and privileges now or hereafter belonging thereto or which may be necessary or required for the use and operation of the Premises. The Premises are located in the Eagar Shopping Center (the "**Shopping Center**") in the **Town of Eagar, State of Arizona**. The legal description of the Shopping Center is attached hereto as **Exhibit "B"**.

2. **TERM**

The Term of this Lease shall commence on the date hereof and shall expire on the last day of the sixtieth (60th) full month from the Rental Commencement Date (the "**Initial Term**"); notwithstanding, however, if the Initial Term, or the Initial Term as extended, shall expire during the months of October, November or December of any year, then Lessee may, at its option, by written notice to Lessor not later than three (3) months prior to the expiration of the Initial Term, or three (3) months prior to the expiration of the Initial Term as extended, elect to extend the Term until the immediately following February 1st.

3. **OPTION TO EXTEND**

Provided Lessee is not then in default at the time of exercise of an option or if in default, said default is cured, Lessee shall have one (1) option to extend the Term of this Lease for a period of five (5) years. The five (5) year period is hereafter called a "**Renewal Period**". Said option may be exercised by Lessee giving notice to Lessor not less than one hundred eighty (180) days prior to the expiration of the then unexpired Term. The terms and conditions of this Lease shall remain unchanged through the Renewal Period.

4. **POSSESSION**

Lessor shall deliver to Lessee exclusive possession of the Premises erected thereon on the first day of the Initial Term.

5. **FIXED RENT - INTENTIONALLY DELETED**

6. PERCENTAGE RENT

(a) The Rental Commencement Date shall occur on the date on which Lessee opens for business to the public, provided, however, that if on that date Lessor has not furnished an extended leasehold policy of title insurance issued by Stewart Title Guaranty showing this Lease a record and the condition of title to be as represented by Lessor in **Section 7(a)** in the amount of Five Hundred Thousand Dollars (\$500,000.00) which coverage shall include the Premises and Lessee's usage of the Common Area, properly executed Non-Disturbance and Attornment Agreements in form and substance identical to that attached hereto as **Exhibit "C"** (the holder of all liens or encumbrances which are or may be superior to this Lease, a properly executed non-disturbance agreement from the holder of a deed of trust and/or security agreement encumbering the Lessor's Property in form and substance identical to that attached hereto as **Exhibit "C-1"** and certificates of insurance or copies of policies required to be obtained and maintained by Lessor pursuant to **Section 15** of this Lease, then and in such event, the Rental Commencement Date shall be extended to the date on which Lessor has furnished the last of the items heretofore set forth.

(b) Commencing on the Rental Commencement Date, as hereinafter defined, Lessee shall pay as percentage rent a sum equal to one and one-half percent (1-1/2%) of its gross sales made by Lessee in the Premises during each fiscal year ("**Percentage Rent**"). Lessee has a fiscal year of 52-53 weeks. Such fiscal year closes on the Saturday night closest to December 31. Each subsequent fiscal year will begin on the immediately succeeding Sunday. Annual Percentage Rent shall be determined and payable monthly on or before the twenty-fifth (25th) day following the close of each full calendar month during the Initial Term and during the Renewal Period based on gross sales for the preceding calendar month. The first monthly payment of annual Percentage Rent due hereunder shall include prorated annual Percentage Rent based on gross sales from the rental commencement date through the last day of the month immediately prior to the first full calendar month.

(c) The term "**Gross Sales**" as used herein shall mean the total amount realized as the result of retail sales of merchandise and services made in the Premises by Lessee and the sub-rentals received by Lessee from sublessees of a part or parts of the Premises; excluding, however, or deducted from, if previously included, the following: (i) all credits and refunds made to customers for merchandise returned or exchanged, (ii) sales to employees at a discount, (iii) all receipts from telephones, money orders, lockers, kiddie rides, weighing and vending machines, (iv) sales of cigarettes, tobacco and tobacco products, (v) excise, sales, privilege, use, occupational and other taxes, whether now or hereafter imposed, which are based upon the gross receipts of Lessee from the sale of goods or services and which must be paid by Lessee whether or not collected by Lessee from Lessee's customers, (vi) sums or credits received in settlement of claims for loss or damage to goods, (vii) returns of goods to vendors or suppliers, (viii) returns or transfers of goods from the Premises to other stores or warehouses of Lessee, (ix) charges for delivery of goods to customers, (x) service charges, interest and collection expenses received or receivable from customers, (xi) lottery ticket sales, (xii) sales proceeds and/or the price of products to a charitable non-profit, service or other like organization donated by Lessee, and (xiii) all sales from Lessee's website(s) or pursuant to e-mail solicitations.

(d) On or before the first (1st) day of April following each full or part calendar year of the Term, and within sixty (60) days following the expiration of the Term, Lessee shall furnish to Lessor a final statement of the Gross Sales made for the preceding full or part fiscal year. Based upon the statement of Gross Sales so furnished, the annual Percentage Rent paid or

payable for each fiscal year shall be adjusted between Lessor and Lessee and each party hereby agrees to pay to the other on demand the amount of any excess or deficiency in annual Percentage Rent paid by Lessee to Lessor during the preceding calendar year as may be necessary to effectuate adjustment to the agreed annual Percentage Rent. Said statement shall be conclusive unless within two (2) years after it is furnished, Lessor shall present to Lessee a claim for additional Percentage Rent. For the sole purpose of verifying the accuracy of Lessee's statement of Gross Sales and computation of Percentage Rent, if any, Lessor may cause the applicable records of Lessee to be audited by a certified public accountant, in a manner which does not unreasonably interfere with the conduct of Lessee's business, not later than two (2) years after such statement is furnished to Lessee. Lessor shall hold in confidence all information furnished by Lessee or obtained from Lessee's records except such information may be disclosed to prospective purchasers, lenders and/or in connection with any litigation between the Lessor and Lessee. In the event that any audit conducted by Lessor pursuant to this **Section 6(c)** reveals that any computation of Percentage Rent was understated, Lessee shall immediately pay to Lessor the amounts understated upon determination. If any audit discloses an understatement in any report of three percent (3%) or more of the Percentage Rent payable for any singular calendar year, Lessee shall in addition reimburse Lessor for any and all reasonable costs and expenses in conducting the audit.

(e) Lessee makes no representation or warranty as to the sales it expects to make in or from the Premises or that it will use the Premises for any particular purpose or at all.

(f) If in any fiscal year Lessee's Gross Sales exceed Nine Million Dollars (\$9,000,000.00), then the Percentage Rent for such fiscal year shall be increased from one and one-half percent (1-1/2%) to two percent (2%) of Gross Sales. Lessee shall pay the additional one-half of one percent (1/2 of 1%) at the time that Lessee furnishes to Lessor the final statement of Gross Sales as more fully set forth in **Section 6(d)** above.

7. QUIET ENJOYMENT, TITLE AND TAXES

(a) Lessor warrants, represents and agrees that Lessor has full right and power to execute and perform this Lease and to grant this leasehold estate, and agrees that Lessee, on paying the rent and performing the agreements contained herein, shall peaceably and quietly have, hold and enjoy the Premises and all rights, easements, appurtenances and privileges belonging or in anyway appertaining thereto, throughout the Term and the Renewal Period. Lessor further warrants, represents and agrees that Lessor is the holder of title to the Shopping Center in fee simple absolute, free and clear of all tenancies, occupancies, restrictions, rights, reservations, liens and encumbrances except those set forth on **Schedule B** of the Preliminary Title Report, a true copy of which is attached hereto as **Exhibit "D"** and by reference incorporated herein. In addition, Lessor warrants, represents and covenants with Lessee that Lessor has not granted any exclusives of any kind or nature to any other tenant or occupant of space within the Shopping Center of which the Premises are a part.

(b) All taxes, assessments and charges on land or improvements and obligations and/or notes secured by a mortgage, deed of trust, or other lien upon the Premises and/or upon the Shopping Center and/or upon Lessor's Property (as defined in **Section 11**) of which the Premises are a part shall be paid by the Lessor prior to delinquency. The Lessee may perform or satisfy any lien, encumbrance, agreement, obligation or note of the Lessor which may threaten its enjoyment of the Premises, provided Lessee has first notified Lessor thereof and Lessor has not cured the same within thirty (30) days after the date of Lessee's notice, and if it does so it shall be subrogated to all rights of the holder against the Lessor or the Premises or

both and shall be reimbursed by the Lessor for all resulting expenses, disbursements and attorneys' fees, together with interest thereon at the Lessee's Interest Rate as hereinafter in this Lease defined from the date of expenditure until repaid and no merger shall be construed which would defeat such subrogation. All sums due from Lessor to Lessee may be deducted from Percentage Rent, and all other monies otherwise payable by Lessee to Lessor.

8. USE OF PREMISES

(a) The Premises shall be used as and for a retail food supermarket selling any and all items of merchandise that are sold from time to time in similar stores operated by Lessee.

(b) Lessee shall not create or allow any nuisance to exist on the Premises.

(c) Lessee shall at all times keep the Premises in a clean, orderly and sanitary condition and shall not cause or permit any unusual and objectionable odors to emanate therefrom.

(d) Lessor represents that there are no covenants in any other lease or instrument or any legal impediment affecting the Shopping Center or any part thereof which will prevent or restrict the construction, the use and/or the occupancy of the Premises as a retail food supermarket or which prevents or restricts the granting by Lessor or the exercise by Lessee of the rights and easements to use in common with others the Common Areas of the Shopping Center nor the granting of the exclusive rights to Lessee as set forth in **Section 31** hereof and that all rights of Lessee hereunder are not subject to divestiture unless Lessee is in default hereunder and fails to cure such default within the applicable period of grace. Lessor further represents that the present zoning of the Shopping Center permits the use and occupancy of the Premises for the operation of a retail food supermarket selling any and all items and merchandise, which are sold from time to time in similar, stores operated by Lessee.

9. ALTERATIONS

Lessee at its own expense may from time to time during the Term make any alterations, additions and improvements to the interior and to the storefront of the Premises which it may deem advisable or necessary; provided, however, any changes to the storefront and structure shall require the prior written consent of Lessor, which consent shall not be unreasonably withheld. Lessee agrees that any such alterations, additions and improvements shall be made in a first-class workmanlike manner and in accordance with all valid federal, state, county and municipal requirements applicable thereto and when completed, the same will not structurally weaken the Premises or change or modify the exterior architectural design of the Premises so as to render the building inharmonious with the over-all architectural design of the other retail buildings in the Shopping Center. All salvage from such work shall belong to Lessee. Lessee will pay for all work performed at Lessee's instance or request and will not permit any mechanics' and/or materialmen's lien to be imposed in connection with such work. To the extent a lien is imposed against the Premises, Lessee shall, within twenty (20) days after Lessee first has actual knowledge that such lien is imposed, cause the same to be discharged or bonded over in accordance with the provisions of the Arizona Revised Statutes.

10. SIGNS

(a) Subject to the approval of the appropriate governmental body, Lessee may place its customary signs and its sub-lessee's customary signs in, on and about the Premises and on

the exterior walls and facade thereof. So long as the same restriction applies to all other lessees in the Shopping Center, Lessee shall not place any signs upon the parking area, sidewalks or other Common Areas in the Shopping Center. Lessor reserves the right to approve any other signage placed by Lessee on the exterior walls of the Premises.

(b) Lessor has erected at Lessor's sole expense within the Shopping Center monument sign(s) advertising the entire Shopping Center. Said monument sign or signs shall be kept in good order and repair and lighted during the evening hours until one (1) hour after Lessee closes for business. Unless prohibited by governmental authority, Lessee's name shall be placed thereon in the most prominent position with lettering of a size, type and prominence approved by Lessee, which approval will not be unreasonably withheld. No pylon signs shall be erected without Lessee's consent which consent may be conditioned upon Lessee's name being placed thereon with lettering of a size, type and prominence approved by Lessee and with the sole and absolute discretion.

(c) Lessor shall not erect within the Shopping Center any other monument signage advertising the Shopping Center or any other occupants therein without first procuring Lessee's prior written consent. The parties acknowledge and agree that Lessee need not consent to any such monument signage unless Lessee's name is also placed thereon by Lessor in a position and with lettering of a size, type and prominence approved by Lessee, which approval shall not be unreasonably withheld. All exterior Premises signs placed on the Premises by Lessee shall be restricted to identification of the businesses or services located or provided therein. No exterior building sign shall extend above the building roof or be painted on the exterior building surface.

(d) Lessee may use window and/or door signs in the interior of the Premises so long as such window and/or door signs are consistent with and substantially identical to such other window and/or doors signs used by Lessee in a majority of its other stores.

11. PERSONAL PROPERTY

All trade fixtures, equipment, machinery and other property presently situated in the Premises ("**Lessor's Property**") shall remain in the Premises and Lessee shall be entitled to use the same and will make such repairs and/or replacements thereto as Lessee deems necessary or appropriate for Lessee's use. A list of Lessor's Property is attached as **Exhibit "H"** and by reference incorporated herein. Lessee shall prior to the date on which it opens for business to the public, place on the loading dock behind the Premises any of the Lessor's Property which Lessee does not intend to use at which time all risk of loss with respect thereto shall be borne by Lessor and Lessor shall, at its expense, remove such property from the loading dock as soon as reasonably possible after the same has been placed thereon. Title to Lessor's Property shall remain in Lessor but to the extent an item of Lessor's Property has been replaced by Lessee at Lessee's sole cost and expense then Lessor shall have no further interest with respect thereto of any kind or nature whatsoever. Any trade fixtures, equipment, machinery and other property installed in or attached to the Premises by and/or at the expense of Lessee ("**Lessee's Property**") shall remain the property of Lessee and Lessee may at any time remove any and all of Lessee's Property which it may have stored or installed in the Premises, including but not limiting the same to counters, gondolas, shelving, show cases and cooling, air conditioning, heating and other machinery. Lessee agrees to repair any material damage to the Premises resulting from the removal of Lessee's Property. Title to any of Lessee's Property not removed by the Lessee within thirty (30) days from the expiration or earlier termination of this Lease shall at Lessor's option vest in Lessor. Lessor acknowledges that Lessee may lease and/or finance

the purchase of all or a part or parts of Lessee's Property and in connection therewith Lessee's lessor or Lessee's lender as the case may be, will require the execution and delivery of a waiver and/or subordination agreement by Lessor pursuant to which Lessor acknowledges and agrees that Lessor's lien does not extend in any way or manner to Lessee's Property so leased and/or financed. Lessor agrees to execute Lessor's Subordination and Waiver agreement if it is substantially similar to that attached hereto as **Exhibit "G"**.

12. UTILITIES AND REPAIRS

(a) Lessee shall pay for all telephones, water, gas, electricity and any other utilities, if any, used by Lessee on the Premises.

(b) Lessee shall make all necessary non-structural interior repairs to the Premises and to the ceiling, electrical equipment, electrical wiring, mechanical equipment, fire sprinklers and plumbing to the extent such items service only the Premises, and are located inside and/or under the floor of the Premises, the doors of the Premises, any and all of Lessee's store fixtures located in the Premises, the windows and plate glass to the Premises the utility lines inside the Premises so long as such utility lines service only the Premises, the electrical junction boxes which serve the Premises exclusively and which are located on the exterior of the rear wall of the improvement upon the Premises, and to the loading dock appurtenant to the Premises, so that the same are maintained in such condition as Lessee may deem necessary. In no event shall Lessee be required to make any repairs or replacements which may be made necessary as a result of damage or destruction by fire, the elements, casualty, structural fault or failure or by Lessor's default or failure to repair or by the negligence of Lessor, its agents, employees or independent contractors or others for whom Lessor is legally responsible, and all such repairs and/or replacements shall be made by Lessor. Lessor represents and warrants unto Lessee that all electrical equipment, electrical wiring, mechanical equipment, fire sprinklers and plumbing, the utility lines inside the Premises, the electrical junction boxes and the HVAC servicing the Premises are in good operating condition and repair. To the extent that any one or more of the items enumerated are not in good operating condition and repair, then Lessee, at its option, may make such repairs and/or replacements thereto as may be necessary or required to place the item or items in the condition so represented and the costs incurred by Lessee in connection therewith shall be paid by Lessor to Lessee within ten (10) days from the date of written demand therefore or alternatively, Lessee can require that Lessor take whatever action is necessary or required in order to cause the item or items which are not in a condition as represented to be placed in good operating condition and repair at Lessor's sole cost and expense.

(c) Lessor shall promptly make all repairs and replacements, other than those herein required to be made by Lessee, and do all things which may be necessary to maintain the Premises in a safe, dry and tenantable condition, in good order and repair and the exterior in a good state of painting and decoration. The obligation of Lessor in this regard includes, by way of illustration but not necessarily of limitation, the structure, roof, exterior walls and electrical equipment, electrical wiring, mechanical equipment, fire sprinklers and plumbing located outside the Premises. If, by reason of the making of repairs required to be made by Lessor, Lessee is deprived of the use or benefit of all or a part of the Premises, all charges payable by Lessee to Lessor, if any, shall abate or be equitably reduced according to the extent to which Lessee is deprived of such use or benefit. Notwithstanding the foregoing, in the event any repairs or replacements are required by reason of the negligent or willful and intentional act of Lessee, Lessee's agent, employees or independent contractors, the reasonable cost of such repairs or replacements shall be borne by Lessee; provided, however, that Lessee's obligation in this

regard shall be reduced by the amount of insurance proceeds which are paid and/or which should have been paid had Lessor maintained the insurance required to be made by Lessor pursuant to the provisions of this Lease, if any.

(d) All repairs and/or replacements to be made by Lessor shall be of good quality workmanship and material and all replacements shall be of a quality equal to or exceeding that of the original. All repairs and/or replacements shall be commenced as soon as reasonably possible after the need therefor becomes known and shall be completed as soon as reasonably possible after commencement.

(e) Lessee reserves the right to place a satellite dish(es) on the roof of the Premises which are not visible from the street unless appropriately screened and do not detrimentally affect the integrity of the roof. All costs of installation and maintenance thereof shall be borne by Lessee. All costs of removal thereof shall be borne by Lessee.

(f) Lessee shall be obligated to make such repairs and/or replacements to the HVAC servicing the Premises as Lessee deems necessary or appropriate. However, should Lessee elect to replace the HVAC or any component part thereof, Lessee shall have the right of the expiration of the Term of this Lease at Lessee's option either:

(i) To remove such HVAC equipment if Lessee has replaced the total thereof or to remove the component part or parts so replaced by Lessee (if Lessee has replaced less than the total of such HVAC); or

(ii) Be reimbursed by Lessor for Lessee's cost of such repairs and/or replacements less depreciation at the time of the expiration of the Term or earlier termination of this Lease.

13. CONFORMITY WITH LAW

(a) Lessor represents and warrants that the Premises and appurtenances conform to every applicable requirement of law or duly constituted authority and of any board of underwriters, rating bureau or similar organization having jurisdiction and also to the requirements of the carriers of all insurance on the Premises.

(b) Lessee shall at Lessee's cost promptly and properly observe and comply with all present and future orders, regulations, directions, rules, laws and ordinances which relate solely to Lessee's specific usage of the Premises provided, however, that to the extent compliance requires any alterations, modifications or changes to the structure, roof and/or exterior walls the obligation with respect thereto shall be that of the Lessor and Lessee shall have no responsibility in connection therewith. Lessor shall, at its cost, promptly and properly observe and comply with all present or future ordinances, regulations, directions, rules, laws, ordinances and requirements which are applicable to the Premises other than those to be complied with by Lessee as set forth above.

14. ENTRY BY LESSOR

Lessor shall have the right to enter upon the Premises at reasonable hours and after reasonable notification for the purpose of inspecting or repairing the Premises and performing any other obligations of Lessor hereunder. Any repairs shall be done by Lessor so as to minimize interference with the conduct of Lessee's business.

15. INSURANCE

(a) All policies of insurance provided for herein shall be written as primary policies (without "**contribution**" or "**solely in excess of coverage carried by Lessee**" provisions) with responsible and solvent insurance companies with a policyholder's rating of "A" or better and a financial rating of "VIII" or better in Bests' Insurance Reports - Fire and Casualty, and shall waive all rights of subrogation which the insurer might otherwise have, if any, against Lessee and shall further contain an endorsement requiring ten (10) days written notice to Lessee prior to cancellation, termination or expiration, or change in the coverage, scope or amount of any such policy. Immediately following delivery of possession of the Premises to Lessee, Lessor shall supply Lessee (and at all times during the Term of the Lease keep on file with Lessee) a true and correct copy of all such policies or certificates of insurance reflecting the coverage required hereby, the form of which is **ACCORD 27** together with satisfactory evidence showing that all premiums thereof have been paid and thereafter, as additional premiums become due, Lessor shall supply Lessee with satisfactory evidence that said premiums have been paid.

(b) At all times during the Term hereof, Lessor shall keep the Premises and Lessor's Property insured under an "**All Risk**" policy of insurance, with insurance companies which meet the above requirements, and in amounts not less than the replacement cost of the Premises, excluding foundations, excavations and footings, with loss payable thereunder to Lessor. Any proceeds under said insurance policies shall be paid to Lessor and held by Lessor in trust and applied and distributed by Lessor toward the restoration and rebuilding of the Premises pursuant to **Section 16** of this Lease. Lessee shall not be liable for any loss or damage by fire, irrespective of the cause thereof. Lessor shall maintain a deductible in an amount not more than Ten Thousand and no/100 Dollars (\$10,000.00).

(c) Lessor shall, at all times during the Term of this Lease, maintain in force for the joint benefit of Lessor and Lessee, a commercial general liability policy for personal injury, bodily injury (including wrongful death), and damage to property, with respect to the Common Areas by the terms of which Lessor and Lessee are named as insureds and are indemnified against liability for damage or injury to the property or person (including death). Such insurance policy or policies shall be maintained on the minimum basis of TWO HUNDRED FIFTY THOUSAND and NO/100 DOLLARS (\$250,000.00) for damage to property, THREE MILLION and NO/100 DOLLARS (\$3,000,000.00) for bodily injury to or death of one person, and FIVE MILLION and NO/100 DOLLARS (\$5,000,000.00) for bodily injury or death in any one accident. If at any time or from time to time the Lessor or the Lessee is of the opinion, reasonably exercised, that the limits of liability need to be increased, then Lessee shall give written notice thereof to Lessor and Lessor shall cause the limits of liability to be increased to such additional amounts as may be reasonably required by Lessee.

(d) Lessee shall at all times during the Term of this Lease maintain a commercial general liability policy with respect to the Premises, the limits of which shall be not less than those which Lessee requires the Lessor to maintain with respect to the Common Areas provided, however, that Lessee reserves the right to maintain deductible(s), self-insurance retention limit(s) and the right to self insure such amount(s) all as Lessee may elect; none however to exceed Five Hundred Thousand and no/100 Dollars (\$500,000.00) without the prior written consent of Lessor. Lessee shall, as soon as reasonably possible after receipt of written request therefore, furnish to Lessor a certificate reflecting that the commercial general liability policy referred to hereinbefore in this **Subsection 15(d)** has been obtained and the premium therefore paid.

16. RESTORATION

(a) If at any time either the Premises and/or the Common Areas within the Shopping Center are destroyed or damaged by fire, the elements, casualty, or from any cause whatsoever, Lessor, at its expense shall promptly and with due diligence restore or rebuild them as nearly as practicable to the condition existing just prior to such destruction or damage.

(b) If, as a result of damage or destruction due to fire or the elements or casualty, the whole or any part of the Premises and/or the Common Areas located in the Shopping Center shall become untenable, dangerous or unfit for Lessee's use or, if Lessee shall thereby lose the use of all or any part thereof, all charges otherwise payable by Lessee to Lessor, if any, shall abate or be equitably reduced based upon the extent of the interference from and after the date of the damage, destruction or interference to a date which is ninety (90) days after the date exclusive possession of the reconstructed Premises is tendered to Lessee or until Lessee opens for business to the public, whichever first occurs.

(c) If Lessor, within thirty (30) days from the date of the damage or destruction, has not commenced the repair and/or restoration of the Premises and/or has not completed the same within six (6) months after the occurrence of any damage or destruction, Lessee shall have the right upon giving notice to Lessor in addition to other rights provided herein, to commence and/or complete the restoration of the Premises at Lessor's sole cost and expense. If Lessee elects to commence and/or complete said repair and/or restoration, Lessor shall promptly pay to Lessee any insurance proceeds in respect to the damage to the Premises. If the insurance proceeds are not adequate to repair and/or restore the building upon the Premises to the condition in which it existed immediately prior to the damage or destruction, Lessor shall be responsible to deposit with Lessee an amount equal to the deficiency within thirty (30) days after the date of demand therefor. To the extent Lessee expends any of its funds in connection with paying the cost of construction of the repair and/or restoration of the Premises (excluding however, any money spent by Lessee with respect to the installation of Lessee's Property which was not a part of Lessor's original obligation in connection with the construction), then all such sums so paid by Lessee shall be paid by Lessor to Lessee within thirty (30) days after receipt of such demand therefor and if not so paid shall bear interest from the date of demand therefore until repaid at the Lessee's Interest Rate specified in **Section 16(d)** hereof and Lessee shall have the right to offset such sums together with interest thereon against, Percentage Rent and all charges, if any, otherwise payable by Lessee to Lessor pursuant to the terms of this Lease. For the purpose hereof, the cost of construction shall include all costs and expenses reasonably incurred by Lessee in connection with the repair and/or restoration, including reasonable architectural and engineering fees, permit fees, the hard costs of labor and material and a reasonable amount for contractor's overhead and profit.

(d) In the event that the damage or destruction to either the Premises and/or the Common Area occurs when less than one (1) year of the initial Term remains, Lessor may elect by written notice to Lessee to terminate this Lease in lieu of making the repair and/or restoration required, provided that the cost of repair and/or replacement exceed fifty percent (50%) of the then replacement cost of the Premises and provided that written notice of termination is received by Lessee within thirty (30) days from the date of the damage or destruction. Provided further, however, that in the event Lessor elects to terminate the Lease as aforesaid but Lessee gives notice of its intent to exercise its option for the Renewal Period, then and in such event, Lessor's notice of termination shall be null, void and of no force and effect. In addition, in the event the damage or destruction exceeds twenty-five percent (25%) of the replacement cost of the Premises and occurs during the last year of the Renewal Period, then and in such event,

Lessor may by written notice received by Lessee within thirty (30) days from the date of the damage or destruction elect to terminate this Lease.

17. EMINENT DOMAIN

(a) Taking of Entire Premises. In the event of a taking for any public or quasi-public use by any lawful power or authority by exercise of the right of condemnation or of eminent domain or by agreement between Lessor and those having the authority to exercise such right (hereinafter called "Taking") of the whole of the Premises, then (i) this Lease and the Term hereof shall cease and expire as of the date of vesting of title or transfer of possession, whichever occurs earlier, as a result of the Taking, and (ii) any Percentage Rent and other charges, if any, otherwise payable by Lessee to Lessor paid for a period after such date of termination shall be refunded to Lessee upon demand.

(b) Partial Taking of Premises; Partial or Entire Taking of Common Areas.

(i) In the event of a Taking of any part of the Premises or a Taking of the whole or any part of the Common Areas, then this Lease and the Term hereof shall cease and expire in respect of the portion of the Premises and/or the Common Areas taken upon the date of vesting of title or transfer of possession, whichever occurs earlier, as a result of the Taking.

(ii) The award or payment for the Taking shall be paid to and used by Lessor to restore and Lessor shall, except as otherwise provided in this Section, promptly commence and with reasonable dispatch continue out of the proceeds of the award to restore the Premises, the Common Areas in the Shopping Center remaining after the Taking to substantially the same condition (hereafter called "**Pre-Taking Condition**") as existed immediately preceding the Taking except that Lessee shall have the right to require Lessor to make reasonable changes to the Premises in the course of such restoration. If the cost and expense of restoration of the Premises is increased by any change or changes made by Lessee, then Lessee shall pay to Lessor promptly upon demand the amount by which the cost and expense of restoration of the Premises was thereby increased.

(iii) If Lessor does not promptly commence and with reasonable dispatch continue to restore the portion of the Premises and the Common Areas in the Shopping Center, as aforesaid, Lessee shall have the right, upon giving notice to Lessor, in addition to other rights provided herein, to restore the Common Areas and the Premises at Lessor's sole cost and expense. If Lessee elects to restore, Lessor shall promptly pay to Lessee any award or payment as to the Taking of the Premises and in addition thereto shall pay Lessee upon demand for any cost and expense incurred by Lessee for such restoration in excess of said award or payment received. Until Lessee has been fully reimbursed for such cost and expense plus interest thereon at the Lessee's Interest Rate, Lessee may deduct the same from payment of Rent, Percentage Rent and all other charges, if any, otherwise payable by Lessee to Lessor. If, at the end of this Lease, Lessee has not been fully reimbursed therefor, Lessee shall have the right to extend the Term of this Lease for any period of time selected by Lessee which is less than or equal to the period which shall enable Lessee to recover such cost and expense plus interest by deductions from Percentage Rent and all other charges, as aforesaid.

(c) Partial Taking Near End of Lease Term. In the event of a Taking of twenty-five percent (25%) or more of the floor area when less than one (1) year remain under the Term of this Lease, Lessor may elect to terminate this Lease after such Taking by giving notice of termination received by Lessor within ten (10) days after the date of vesting of title or transfer of possession whichever occurs earlier as a result of the Taking and except that such election to terminate shall become null and void if made by Lessor if, within thirty (30) days after receipt of such notice of termination.

(d) Lessee's Claims. In the event of a Taking of the Premises or any part thereof whether or not this Lease is terminated, Lessee shall have the right to make such claim against the condemning authority as Lessee may deem appropriate.

18. **INDEMNITY**

(a) Lessor's Indemnity. Lessor shall indemnify and hold Lessee and its officers, directors, employees, and agents harmless from and against (i) any and all claims and demands whether for injuries to persons or loss of life or damage to property occurring in the Shopping Center (except the interior of the Premises after exclusive possession is delivered to and accepted by Lessee) or on the streets or sidewalks adjacent to the Shopping Center, unless caused by the negligence or willful and intentional act of Lessee, its agents or employees acting within the scope of their employment, (ii) all loss, damage or injury to the Premises and to Lessee's inventory and/or Lessee's Property therein, due to or occasioned by any overflow or leakage from the roof or exterior of the Premises or by any defect of the exterior walls or the roof or from leakage or defects of any service lines whether located inside or outside of the Premises, or by any failure on the part of Lessor to make any of the repairs herein agreed to be made by Lessor, excluding any loss, damage or injury caused by overflow or leakage from glass, doors, service lines or other items which are Lessee's obligation to maintain, and (iii) from and against all reasonable expense and attorneys' fees incurred by Lessee in connection with (i) and/or (ii) above. Lessor further agrees to indemnify and hold Lessee harmless from and against any and all claims and demands, whether for injury to person or loss of life or damage to the property, which arise from the negligent or willful and intentional act of Lessor, Lessor's agents, employees or independent contractors.

(b) Lessee's Indemnity. Lessee shall indemnify and hold Lessor harmless from and against any and all claims and demands whether for injuries to persons or loss of life or damage to property occurring within the Premises and arising out of the renovation, use and occupancy of the Premises by Lessee, including any and all reasonable expenses and attorneys' fees incurred by Lessor in connection therewith; excepting however, such claims and demands whether for injuries to persons or loss of life or damage to property solely caused by the negligent or willful and intentional acts of Lessor or Lessor's agents, or employees or independent contractors or caused by any latent or patent defects in construction, but regardless of any negligence imputed in Lessor as the owner of property containing or alleged to contain defects or dangerous conditions where the defect or condition which gave rise to the claim or loss was within the control of Lessee. Lessee further agrees to indemnify and hold Lessor harmless from and against any and all claims and demands whether for injury to person or loss of life or damage to property which arise from the negligent or willful and intentional act of Lessee, Lessee's agents or employees or independent contractors acting within the scope of their employment.

(c) Joint Release. Lessor and Lessee each hereby release the other from any and all liability or responsibility to the other or anyone claiming through or under them by way of

subrogation or otherwise for the loss or damage to property or for injury to person(s) caused by an insured peril, even if such loss or damage shall have been caused by the act, omission, fault or negligence of the other party, or any one for whom such party may be responsible; provided, however, that this release and waiver shall be effective only in the event and to the extent of actual recovery or payment under the applicable insurance policy or policies and provided further, that this waiver shall be applicable and in force and effect only with respect to loss or damage occurring during such time as the insurance policies required to be carried by Lessor and/or Lessee hereunder shall contain a clause or endorsement to the effect that any such release shall not adversely affect or impair said policies or prejudice the recovery thereunder by the releasing party. Lessor and Lessee hereby agree to each use reasonable efforts to procure the clause or endorsement contemplated in the immediately preceding sentence.

19. CANCELLATION

Lessee shall have the absolute right to terminate this Lease for any reason or for no reason at all upon thirty (30) days prior written notice to Lessor. In addition, Lessor agrees that Lessee, its sublessees or assignees shall not be obligated to operate their business in the Premises and shall have the right to discontinue operations in the Premises provided that Lessee shall give Lessor at least thirty (30) days written notice of Lessee's intent to cease operations. If Lessee has given Lessor notice of its intent to cease operations and as a result, no business is operated within the Premises for a continuous period of sixty (60) days, Lessor may, at Lessor's election, cancel this Lease. In the event of such cancellation Lessee shall be relieved of all liability hereunder not accrued as of the date of the cancellation provided that Lessor's election must occur within ninety (90) days of the date of Lessee's written notice of intent to cease operations. If Lessor elects to cancel, Lessor shall pay to Lessee the unamortized costs of Lessee's Property which Lessee does not intend to remove or any other improvements made to the Premises by or at the expense of Lessee which is not removable by Lessee, simultaneously with giving notice of cancellation provided that if Lessee is, as of the date of its receipt of said notice of cancellation, in the process of a good faith negotiation with an assignee or sublessee then Lessee shall give written notice to Lessor of such good faith negotiations within ten (10) days after receipt of Lessor's notice of cancellation and Lessor's notice of cancellation shall without further act of Lessor or Lessee be deemed suspended. If such negotiations do not result in the third party becoming an assignee or sublessee of Lessee within ninety (90) days following the date of Lessee's receipt of Lessor's notice then Lessor shall have the right to withdraw its notice of cancellation or have it deemed revived effective thirty (30) days following its revival less the number of days that expired prior to Lessor's receipt of notice of Lessee's such good faith negotiations. Except as hereinbefore set forth, Lessor's notice of cancellation shall be effective thirty (30) days following Lessee's receipt thereof. In the event Lessee has not received written notice of Lessor's election to either withdraws its notice of cancellation or have it deemed revived with thirty (30) days following the expiration of the aforementioned ninety (90) day period, it shall be conclusively presumed that Lessor has elected to have its notice of cancellation deemed revived.

20. BANKRUPTCY

(a) If pursuant to an order, judgment or decree entered by any court of competent jurisdiction (i) a receiver, trustee or liquidator of Lessee, of all or substantially all of the assets of Lessee, shall be appointed or (ii) Lessee shall be adjudicated as bankrupt or insolvent or (iii) a petition seeking reorganization of Lessee or an arrangement with creditors or to take advantage of any insolvency law shall be approved and as a result of the happening of any such contingencies the obligation of Lessee to pay any rent shall be modified or abrogated, Lessor, in

addition to any other remedy available by law, in equity or by statute, may serve as notice of termination of this Lease upon Lessee stating the date of termination, which date of termination shall be at least ten (10) days after the date on which such notice is served and upon the date specified in such notice this Lease and the Term hereof shall cease and expire and Lessee shall then quit and surrender the Premises.

(b) If pursuant to an order, judgment or decree entered by any court of competent jurisdiction (i) a receiver, trustee or liquidator of Lessor, of all or substantially all of the assets of Lessor, shall be appointed or (ii) Lessor shall be adjudicated as bankrupt or insolvent or (iii) a petition seeking reorganization of Lessor or an arrangement with creditors or to take advantage of any insolvency law shall be approved and as a result of the happening of any such contingencies the Trustee of Lessor shall fail to assume affirmatively this Lease or any covenant therein within the statutory period allotted therefor or if this Lease be deemed rejected after an order is entered directing that a Trustee be not appointed and as a result of the happenings of such contingencies the other charges, if any, otherwise payable by Lessee to Lessor herein reserved or the Lessee's rights or obligations hereunder or the Lessor's obligations herein shall be modified or abrogated, then Lessee shall have the right, at its option, to terminate this Lease by the service upon Lessor and the Trustee (if appointed) of a notice of termination of this Lease stating the date of termination which date shall be at least ten (10) days after the date on which such notice is served and upon the date specified in such notice, this Lease and the Term hereof shall automatically cease and expire and Lessee shall then quit and surrender the Premises but Lessee shall be entitled to a refund of any other charges, if any, otherwise payable by Lessee to Lessor paid in advance for any period beyond said date of termination and to assert such claim it may have for the loss of its leasehold.

21. ASSIGNMENT AND SUBLETTING

(a) Provided Lessee has not received a written notice of default which remains uncured, Lessee may assign this Lease or sublet the Premises only with the prior written consent of Lessor, which consent will not be unreasonably withheld, provided, however, that the consent of the Lessor to any such assignment or sublease shall not be required in connection with the sale, exchange or other disposition by Lessee to an unaffiliated third party of all or substantially all of its stock, its assets, or its supermarket operations or a substantial majority of its stores in the same division of the company as the store operated on the Premises. For the purposes hereof a division may contain not less than three (3) stores. Further, it is expressly acknowledged and agreed that in connection with the sale, exchange or other disposition for which Lessor's consent is not required as hereinbefore set forth, the provisions of Article 8(a) will, without further act, be deemed amended so as to permit whatever alternative usage the purchaser intends to use the Premises. The parties acknowledge and agree that, in the event Lessor disapproves any other assignment or sublease, Lessee may by written notice to Lessor terminate this Lease and from and after the date of such written notice this Lease shall be deemed terminated as if the Term hereof has expired as of the date of Lessee's written notice of termination. The parties expressly acknowledge and agree that except as specifically hereinbefore set forth Lessor shall have no right of consent to any assignment or subletting of all or any part of the Premises. In addition, the parties specifically acknowledge and agree that nothing contained in this Lease shall expressly or by necessary implication be interpreted to require Lessee or its assigns or sublessees to continually occupy the Premises. Any assignment or sublease shall not relieve the Lessee for liability under this Lease.

(b) Notwithstanding the provisions hereinbefore set forth, Lessee shall have the absolute right to sublease up to twenty-five percent (25%) of the Premises to one or more sublessees without having to procure the prior written consent of Lessor.

(c) Lessor acknowledges that, as a part of Lessee's right to sublease as set forth above, Lessee intends to sublease space within the Premises to a bank or other financial institution. Lessor acknowledges and agrees that such bank or other financial institution may place its customary signs in, on, or about the Premises and on the exterior walls and facade thereof subject to such signage complying with all governmental rules and regulations applicable thereto. The parties further acknowledge and agree that notwithstanding any provision contained herein and in particular in **Section 6**, which is expressly or by necessary implication to the contrary, Lessee shall include within its Gross Sales the rental income received by Lessee from such bank or financial institution but Lessor shall have no interest whatsoever and Lessee shall not be required to include within its Gross Sales any proceeds derived by such bank or financial institution for the sales of merchandise and/or services in connection with the operations conducted by such bank or financial institution within the Premises.

22. SUBORDINATION

Lessor shall have the right to subject and subordinate this Lease and the leasehold estate herein granted to the lien of any mortgage or mortgages, deed of trust or deeds of trust heretofore or hereafter placed upon Lessor's interest in the Premises provided however, that each such mortgagee(s) or beneficiary(ies) shall as a condition precedent to such subordination recognize the validity and continuance of this Lease and Lessee's rights hereunder and assume the obligations of Lessor, in the event of foreclosure of Lessor's interest, trustee's sale or otherwise, in form and substance reasonably acceptable to Lessee. By execution of these presents, Lessee hereby approves a subordination agreement in form and substance substantially identical to that attached hereto as **Exhibit "C"**. In the event Lessor's lender requires a subordination agreement that is not substantially identical to that attached hereto as **Exhibit "C"**, any reasonable attorneys' fees incurred by Lessee in connection with such subordination agreement shall be paid by Lessor to Lessee upon demand.

23. CONSTRUCTION Intentionally Deleted.

24. COMMON AREAS

(a) The term "**Common Areas**" shall include all parking areas, sidewalks, common concourses, streets, alleys, driveways, entrances, exits, landscaping and loading areas.

(b) All sidewalks, common concourses and malls, if any, in the Shopping Center shall be of cement or concrete construction. The parking areas, streets, alleys and service drives or ways shall be surfaced with a durable asphalt, cement or other permanent-type material and properly striped for parking stalls and adequately lighted. Lessor shall also provide adequate water drainage therefor. It is understood and agreed that Lessee's loading dock(s) are not part of the Common Area and shall be maintained by Lessee.

(c) Lessor shall provide and maintain an adequate and sufficient area adjacent to and adjoining Lessee's service entrance for standing, loading, unloading and otherwise servicing the Premises.

(d) Lessor shall, prior to the Rental Commencement Date, at Lessor's sole cost and expense, perform such patching as may be necessary or required in order to place the Common Area in good order, condition and repair and will also, prior to the Rental Commencement Date, reseal and re-stripe the Common Area. Throughout the Term Lessor shall provide and maintain at its cost adequate lighting for the Common Areas, and shall keep all of the Common Areas, and the drainage and lighting systems therefor in good order, condition and repair. Lessor shall, as a part of its responsibility, perform such patching, resurfacing and replacement of the Common Area as may be necessary or required so that the same is at all times throughout the Term kept in good order, condition and repair. Lessee will be responsible to cause the parking lot to be swept, to be cleared of ice and snow and to pick up Lessee's trash. Provided that Lessor has, prior to the Rental Commencement Date, patched, resealed and re-stripped the Common Area, then Lessee shall be responsible to re-stripe and reseal the portion of the Common Area which Lessee determines to need re-stripping and/or resealing throughout the balance of the Term.

(e) Lessor hereby grants to Lessee, its customers, employees and invitees, throughout the Term as the same may be extended, an easement to use the Common Areas shown on **Exhibit "A,"** together with any enlargement of or addition to said Common Areas. Except as may be pre-approved by Lessee, whose approval will not be unreasonably withheld, none of the Common Areas shall be used, or permitted to be used, by either Lessor or any other lessees in the Shopping Center for any sidewalk shop, display of merchandise or other business, occupation or undertaking. Lessor at all times during the Term may at any time, and from time to time during the Term, exclude and restrain any persons from the use or occupancy of the Common Areas, with the exception of bona fide customers, patrons, visitors, employees and service-suppliers of Lessee and other lessees of Lessor and/or occupants of the Shopping Center. In addition to the rights of Lessor, Lessee shall have the right, but not the obligation, to remove from the Common Areas, or to maintain appropriate legal proceedings to restrain the use of any of said Common Areas by any persons who are not bona fide customers, patrons, visitors, employees or service-suppliers of Lessor, Lessee or any other lessee or occupant of Lessor, or any persons who may be picketing thereon. Lessor shall not permit the Common Area in the Shopping Center of which the Premises are a part to be used by anyone other than Lessee and Lessee's customers, employees and annointees without the prior written consent of Lessee, which may be given or withheld in Lessee's sole and absolute discretion.

(f) In the event Lessee is of the reasonable opinion that Lessor is not maintaining the Common Area as required, Lessee must first give written notice to Lessor thereof and Lessor shall have thirty (30) days from the date of such written notice within which to cause the Common Area to be maintained as required. In the event that the Common Area is not maintained as required, then Lessee may exercise its rights to cure as is set forth in **Section 28** and **Section 29** hereof and shall further have the right to take over maintenance of the Common Area; provided, however, that no act by Lessee in this regard shall under any circumstances be deemed or interpreted so as to cause Lessee to become liable for any acts or omissions of Lessor. All costs and expenses incurred by Lessee to cure defaults under the provisions hereof together with interest at the Lessee's Interest Rate and all costs and expenses of any proceedings at law or in equity including, by way of illustration but not of limitation, reasonable attorneys' fees ordered by any order of court shall be assessed against and paid by Lessor.

(g) Lessee shall have the right, without need of further consent or approval, as it deems appropriate to: (i) conduct sales and displays on the sidewalks adjacent to and in front of the Premises; (ii) store shopping carts on the sidewalks adjacent to and in front of the Premises and/or in the Common Area in front of the Premises; and (iii) place and maintain vending

machines on the sidewalks adjacent to and in front of the Premises and/or in the Common Area, so long as such activities on the sidewalks and/or in the Common Area do not unreasonably interfere with the pedestrian or vehicular ingress or egress to and from the remainder of the Shopping Center. In addition, Lessee may conduct promotional events in the Shopping Center Common Area. A promotional event shall consist of productions, stages, advertising, signs, promotional materials, displays and/or exhibits produced for the purpose of attracting customers to the Premises. Such promotional events shall be permitted in the Common Areas of the Shopping Center subject to compliance with the rules and regulations and ordinances of the City of Eagar.

25. TAXES

(a) Lessee agrees to pay the amount of all taxes levied upon or measured by the rent and/or other charges upon which the "rent" tax is imposed payable hereunder, whether as a so-called sales tax, transaction privilege tax, excise tax, or otherwise, but no income taxes shall be payable by Lessee. Such taxes shall be payable at the same time as and in addition to each payment of rent.

(b) Lessee agrees to pay the amount of all fees for occupational licenses, liquor licenses, beer and wine licenses, and other licenses necessary in the operation of the business on or in the Premises.

(c) Lessee agrees to pay the amount of all taxes assessed against and levied upon personal property of Lessee contained in the Premises.

(d) Lessor shall be responsible to pay all real property taxes, assessments and other governmental charges incurred, levied, or imposed, general and special, ordinary or extraordinary of any kind and nature whatsoever with respect to the Shopping Center and all improvements thereon. Lessor shall also be responsible to pay all taxes, assessments and other governmental charges incurred, levied or imposed against Lessor's Property located within the Premises.

26. SURRENDER

At the expiration or earlier termination of the Term or of any Renewal Period or of Lessee's right to possession of the Premises, Lessee agrees that it will peaceably and quietly leave and surrender the Premises in reasonably good condition and repair, reasonable wear and tear, damage by fire, casualty items to be repaired and/or restored by Lessor or damage resulting from the acts or omissions of Lessor, its agents, employees or independent contractors excepted.

27. HOLDING OVER

Should Lessee hold over in possession after the expiration of the Term or any Renewal Period with the consent of Lessor, such holding over shall not be deemed to extend the Term, but the tenancy thereafter shall continue upon the agreements herein set forth, and at the Percentage Rent rate in effect during the last month of the Term, until termination by either party by written notice designating the date of termination given to the other party thirty (30) or more days before such date. Should Lessee desire to hold over and retain possession after the expiration of the term of this Lease or after the expiration of the Renewal Period, Lessee shall first give Lessor thirty (30) days prior written notice of its intention to hold over, which hold-over period may not

exceed one hundred twenty (120) days. Should Lessee hold over without the consent of Lessor, the Percentage Rent rate shall be one hundred ten percent (110%) of the Percentage Rent rate in effect during the last month of the Term or during the last month of the Renewal Period. Provided, however, that in the event the Term is extended in accordance with the provisions of Paragraph 2, then Lessee shall be deemed to have held over only after the expiration of the Term as so extended.

28. DEFAULT AND NON-WAIVER

(a) If any default of Lessor hereunder shall continue uncorrected for thirty (30) days after Lessee has given written notice to Lessor, Lessee may at any time thereafter during the continuance of such default either (i) terminate the Lease by giving notice to Lessor or (ii) cure such default and deduct the cost of such cure together with interest thereon at the Lessee's Interest Rate from Percentage Rent and all other charges otherwise payable by Lessee.

(b) If any default of Lessee hereunder shall continue uncorrected for ten (10) days after receipt by Lessee of written notice thereof from Lessor, if the default relates to Percentage Rent, or for thirty (30) days if the default relates to other than the payment of Percentage Rent, after receipt by Lessee of written notice thereof from Lessor, then Lessor may by giving notice to Lessee at any time thereafter during the continuance of said default, either (i) terminate the Lease or (ii) re-enter the Premises by summary proceedings or otherwise expelling Lessee and removing all property therefrom, and reletting the Premises at the best rent obtainable, making reasonable efforts therefor; but until this Lease is terminated Lessee shall remain liable for the equivalent of the amount of all rent reserved herein less the avails of reletting, if any, after deducting therefrom the reasonable cost of obtaining possession of the Premises and after deducting the reasonable costs of reletting.

(c) If any nonmonetary default by Lessee or Lessor cannot reasonably be remedied within thirty (30) days after notice of default, then Lessee or Lessor, as the case may be, shall have such additional time as may be reasonably necessary to remedy said default before this Lease can be terminated or other remedy enforced by Lessee or Lessor so long as reasonable efforts are being made to cure such default.

(d) No delay or omission by either party hereto to exercise any right or power accruing upon any noncompliance or default by the other party with respect to any of the agreements hereof shall impair any such right or power or be construed to be a waiver thereof. The various rights and remedies set forth in this Lease, shall not be considered as exclusive of any other right or remedy, but shall be considered as cumulative and in addition to every other right and remedy now or hereafter existing at law, in equity, by statute or under this Lease. It is further agreed that a waiver by either of the parties hereto of any of the agreements hereof to be performed by the other shall not be construed to be a waiver of any succeeding breach thereof or of any other agreements herein contained.

29. LESSEE'S RIGHT REGARDING CERTAIN REPAIRS

Lessee may, but need not, make any replacements and/or repairs of an urgent and/or emergency nature required to be made by Lessor without first notifying Lessor. Lessor shall reimburse Lessee for any expenditure thus incurred plus interest at the prime rate of **Bank One Arizona, N.A.** plus one percent (1%) as such prime rate exists on the date on which Lessee made any such repair and/or replacement, for urgent and/or emergency repairs and/or replacements; provided, however, that in the event Lessee receives the reimbursement within

ten (10) days from the date of written demand therefore no interest need to be paid by Lessor to Lessee. Repairs of an urgent nature and/or emergency repairs include, by way of illustration but not of limitation, those repairs which if not made expeditiously would or may in Lessee's reasonable opinion result in injury to person and/or damage to property and/or result in something more than a nominal interference with the conduct by Lessee of its business from the Premises. In such event, the repairs and/or replacements may be made without notice but Lessee shall, as soon as reasonably possible thereafter, in any event, within five (5) days of the commencement of any emergency repairs and/or replacements, notify Lessor with respect to the repairs and/or replacements so made and the costs thereof.

30. ATTORNEYS' FEES

The costs, including reasonable attorneys' fees, of any action brought to enforce any of the terms and provisions of this Lease, shall be borne by the party adjudged by the court, sitting without a jury, to be the non-prevailing party.

31. RESTRICTIONS

(a) So long as the Premises are used for a supermarket, no portion of the Shopping Center other than the Premises shall be occupied or used, directly or indirectly (i) for the purposes of a general food market or grocery store, nor for the sale to the general public of fresh or frozen meat or fish, fresh or frozen poultry, fresh or frozen produce or dairy products, fruits, vegetables, bakery goods, cheese or lunch meats sold in bulk form or any combination thereof, (ii) for the purpose of a bakery or a delicatessen, or (iii) for the sale of liquor and/or wine and /or other alcoholic beverage for off premises consumption, without the prior written consent of the Lessee, which consent may be given or withheld at the Lessee's sole and absolute discretion. In addition, so long as a portion of the Premises is operated as a delicatessen, and for a period of one (1) year after the cessation of such operation, no portion of the Shopping Center, other than the Premises, shall be used for a sit-down or take-out facility whose primary products for sale at retail are cheese and lunch meats, submarine sandwiches, prepared salads, or barbecued, fried or rotisserie chicken, without in each case the prior written consent of the Lessee, which consent may be given or withheld at Lessee's sole and absolute discretion.

(b) So long as the Premises are used for a supermarket, no portion of the shopping center shall be occupied or used directly or indirectly for the sale as what is presently referred to as snacks and/or "meals to go" and/or "home meal replacement" such as are presently offered by Boston Market, Foodini and Eatzie nor as a drug store or for the distribution of prescription items requiring the presence of a registered pharmacist nor for the sale of alcoholic beverages for off-premises consumption.

(c) The parties acknowledge and agree that the following activities shall be prohibited within the Shopping Center:

(i) Any auction, bankruptcy or going out of business sale.

(ii) Any advertising medium that might constitute a public or private nuisance, such as flashing lights, odors, rotating devices, loud-speakers or sound amplifiers, photographs or radio or television broadcasts in a manner which can be heard, seen or experienced outside of its Pad or its space, or create or allow any nuisance to exist on its Pad or its space.

(iii) Any unlawful purpose.

(iv) Burning of papers, trash or garbage of any kind on its Pad or its space or cause or permit any unusual and objectionable odors to emanate from its Pad or its space, except that odors which are typical of uses customarily included within a retail shopping center (for example, restaurant odors) shall not be prohibited.

(v) Parking trucks and delivery vehicles or suffering any other use thereon, so as to unreasonably interfere with the use of Common Areas, provided that parking trucks and/or delivery vehicles on the Common Areas to the rear of the In-Line Parcel shall be permitted.

(vi) None of the following uses shall be conducted anywhere within the Shopping Center: massage parlor, adult book store, adult video, cocktail lounge, bar, a night club, the following places of recreation: bowling alleys, gyms, pool halls, skating rinks, bingo parlors, video and pinball arcades and health spas (including dance or aerobic studios) day spas, churches and other religious institutions. In addition, no portion of the Shopping Center shall be used as a training or educational facility which will include without limitation a beauty school, barber college, charter school(s), alternative education center(s), pre-school, day care facilities, reading room except in conjunction with a bookstore, place of instruction or other operation catering primarily to students or trainees as opposed to customers.

(vii) In addition, no part of the Shopping Center shall be used as a funeral home or for production, manufacturing, industrial, or storage use of any kind or nature except for storage and/or production of products incidental to the retail sale thereof from the Shopping Center, nor may any portion of the Shopping Center be used as a thrift store or flea market, other than a consignment store.

(d) Lessee shall have the sole and exclusive right to dispense distilled and/or purified water from vending machines located within the Common Area of the Shopping Center. Lessee shall be entitled to install within the Common Area of the Shopping Center such other vending machines, as Lessee may deem appropriate. Further, Lessee shall have the right to install pay telephones within the Common Area of the Shopping Center.

(e) There shall be no additional buildings or improvements constructed in the Shopping Center nor shall there be any changes to the Common Area within the Shopping Center without the prior written consent of Lessee which may be given or withheld by Lessee in its sole and absolute discretion provided, however, that Lessee hereby acknowledges that subject to compliance with the parking requirements as hereinafter set forth, no more than 5,000 square feet of retail space located in one (1) building only may be constructed and occupied in Building Envelope A as reflected on the site plan attached hereto as **Exhibit "A"** and no more than 5,000 square feet of retail space, fast food or sit-down waiter/waitress served restaurant in one (1) building only may be constructed and occupied in a building constructed within Building Envelope B as reflected on the site plan attached hereto as **Exhibit "A"**. Construction and occupancy as heretofore set forth is permitted if, and only if, the following minimum parking ratios are maintained with respect to the total of the Shopping Center:

Retail Parking Ratio – 5 to 1

Fast Food and Non-Retail – 10 to 1

Sit Down Restaurant – 15 to 1

The minimum width of each new parking space shall not be less than 10 feet or as required by code, whichever is greater. The location of new parking and/or drive aisles are subject to the approval of Lessee which will not unreasonably be withheld. The height of any building constructed within Building Envelope A or Building Envelope B shall not exceed 18 feet.

(f) Should any one or more of the restrictions set forth above in this Section 31 be violated, then in addition to any other right or remedy which Lessee may have at law, in equity or pursuant to the provisions of this Lease, the monthly installments of Percentage Rent and all other charges, if any, otherwise payable by Lessee to Lessor, are subject to abatement in accordance with the following schedule, up to and including the day on which the violation no longer exists. The schedule is as follows:

(i) In the event the Lessor has by its act or omission caused or permitted the violation of one or more of the restrictions to occur, then Lessor shall have a period for thirty (30) days from the date of Lessee's notice to cause the violation(s) to no longer exist, and in the event the violation continues to exist on the thirtieth (30th) day after the date of written notice, then one hundred percent (100%) of each monthly installment of Percentage Rent and other charges, if any, otherwise payable by Lessee to Lessor, shall abate until the violation no longer exists; and

(ii) In the event an occupant of space within the Shopping Center, in violation of its Lease, causes a violation of one or more of the restrictions, then Lessor shall have a period of thirty (30) days from the date of Lessee's notice to either cause the violation to no longer exist or to commence legal action in a court of competent jurisdiction to cause the violation to cease to exist. In the event Lessor commences legal action to cause the violation to cease to exist, Lessor shall use commercially reasonable efforts to prosecute the litigation to conclusion. If at the expiration of thirty (30) days from the date of Lessee's notice the violation(s) continues to exist and Lessor has failed to commence legal action or if commenced, has failed to use commercially reasonable efforts to prosecute the legal action in order to cause the violation to cease then the violation will be deemed a Lessor violation and the provisions of **Section 31 (j)(i)** above shall apply.

32. NOTICES AND PAYMENTS

Any approval, disapproval, demand, document or other notice ("**Notice**") which either party may desire to give to the other party must be in writing and may be given by personal delivery, by registered or certified mail, return receipt requested, or by commercial courier or by confirmed fax transmittal to the party or its successors or assigns to whom the Notice is intended at the addresses and fax numbers of the parties set forth below, or at any other address as the party may later designate or by fax. If mailed, Notice shall be made certified or registered mail, deposited in any postal station enclosed in a postage-paid envelope addressed to such party, and shall be deemed given and received on the second, (2nd) Business Day after being deposited in the United States Mail. If commercially sent, the party giving Notice shall use a nationally known commercial courier service (such as Federal Express) and shall be deemed to have been given and received on the second (2nd) Business Day after delivery to the courier provided the Notice was delivered to the service prior to its cutoff for next day delivery. If personally delivered, the Notice shall be addressed to such party at its address and shall be deemed given and received on the day of such personal delivery. Change of address by a party shall be given by Notice as provided in this Section. If sent by fax, the Notice shall be deemed

given and received upon confirmation of receipt of the fax. "**Business Days**" where herein mentioned shall mean all calendar days except Saturdays, Sundays and holidays recognized by the federal government of the United States of America. If receipt of Notice is not accepted or it is not possible due to a change in address or fax number which was properly given by Notice, then such notice will be deemed given, received and effective on the date of mailing such Notice if mailed, the date of delivery to a courier service, if delivered by courier, the date of attempted delivery if hand-delivered, or the date of attempted fax transmittal if delivered by fax. The parties' addresses for Notice are as follows:

If to Lessor: **Eagar Municipal Property Corporation**
Attn: Town Clerk
P.O. Box 1300
Eagar, Arizona 85925
Fax: (928) 333-5140
Phone: (928) 333-4128

If to Lessee: **Bashas' Inc.**
Attn: Real Estate Department
Post Office Box 488
Chandler, Arizona 85244
Fax: (480) 895-5340
Phone: (480) 895-9350

With copies to: Mohr, Hackett, Pederson,
Blakley & Randolph, P.C.
Attn: Gordon A. Mohr, Esq.
Legal Notices No. 286-913
2800 N. Central Avenue, #1100
Phoenix, Arizona 85004
Fax: (602) 240-6600
Phone: (602) 240-3000

33. **HAZARDOUS MATERIAL**

Lessor and Lessee agree as follows with respect to the existence or use of "**Hazardous Material**" (as defined in **Section 33(d)** below) on the Premises and the Shopping Center:

(a) Lessor hereby represents and warrants to Lessee as follows:

(i) Any handling, transportation, storage, treatment, use or disposition of Hazardous Material that has occurred on the Premises or the Shopping Center prior to the commencement date has been and will be in compliance with all federal, state and local laws, regulations, guidelines, codes and ordinances (individually and collectively "**Laws**") regarding Hazardous Material.

(ii) The Premises and the Shopping Center are, and as of the Rental Commencement Date will be, in compliance with all Laws regarding the handling, transportation, storage, treatment, use and disposition of Hazardous Material and Lessor shall not permit the Premises or the Shopping Center to become in violation of such Laws.

(iii) To the best of Lessor's actual knowledge, the soil and ground water on or under the Premises and the Shopping Center are and as of the Rental Commencement Date will be free of Hazardous Material.

(iv) Lessor, at Lessor's sole cost and expense shall, prior to the Rental Commencement Date, cause a Phase I Environmental Assessment to be performed, to be certified to both Lessor and Lessee and a copy delivered to Lessee. Lessor shall also, prior to the Rental Commencement Date, cause to be performed, at Lessor's sole cost and expense, whatever remediation may be necessary or required to remove any Hazardous Materials which the Phase I Environmental Assessment reflects as being in existence within the Shopping Center.

(b) Lessor hereby covenants to Lessee as follows:

(i) Lessor shall be responsible for all costs incurred in complying with any order, ruling or other requirement of any court or governmental body or agency having jurisdiction over the Shopping Center requiring Lessor to comply with any Laws which relate to Hazardous Material or which relate to Hazardous Material created, handled, placed, stored, used, transported or disposed of by Lessor, including, without limitation, the cost of any required or necessary repair, cleanup or detoxification and the preparation of any closure or other required plans and Lessor shall diligently pursue to completion all such work required in connection with the same; excluding, however, any such costs relating to Hazardous Material on the Premises established to have been caused directly by Lessee's use of the Premises.

(ii) Lessor shall indemnify, defend and hold Lessee, its directors, officers, employees and agents and any successor to Lessee's interest in the Premises harmless from and against any and all claims, judgments, damages, penalties, fines, costs, liabilities or losses (including, without limitation, sums paid in settlement of claims, attorneys' fees, consultant fees and expert fees) and all foreseeable and unforeseeable consequential damages, whether known or unknown, which are caused by, arise out of or be related to Hazardous Material which was created, handled, placed, stored, used, transported or disposed of by Lessor or Hazardous Material with respect to which any court, governmental body or agency having jurisdiction over the Shopping Center holds Lessor responsible or otherwise requires Lessor to undertake any repair, cleanup, detoxification or other remedial action; excluding, however, Hazardous Material on the Premises established to have been caused by Lessee's use of the Premises, or the breach of any representation, warranty or covenant contained herein. In the event of any such breach of any representation, warranty or covenant contained herein or in the event of the presence of Hazardous Material, excluding Hazardous Material on the Premises established to have been caused by Lessee's use of the Premises, Lessee has the right (without waiving any of its other remedies) to either (1) terminate this Lease at its sole election by written notice to Lessor, such termination to be effective as of the date of Lessee's notice, or (2) have its monthly rental and any other charges payable by Lessee hereunder abated in proportion to the extent of interference with Lessee's business until such time as the Premises and the Shopping Center comply with all Laws and Lessor has cured its breach of any representation, warranty or covenant contained herein in a manner reasonably satisfactory to Lessee. Lessee shall also have the right to perform any necessary repair, cleanup, detoxification or other remedial action with respect to Hazardous Material to which Lessor has no obligation to repair, cleanup, detoxify or take remedial action (but excluding Hazardous Material established to have

been caused directly by Lessee's use of the Premises) and to offset from Percentage Rent, or Lessee's other monetary obligations hereunder the amount so expended by Lessee; and

(iii) Lessor shall diligently pursue any responsible parties in connection with the performance of any cleanup, repair, detoxification or other remedial action with respect to Hazardous Material to which Lessor is not obligated to take any action.

(c) Lessee hereby covenants to Lessor as follows:

(i) Lessee shall be responsible for all costs incurred in complying with any order, ruling or other requirement of any court or governmental body having jurisdiction over the Shopping Center requiring Lessee to comply with any Laws which relate to Hazardous Material created, handled, placed, stored, used, transported or disposed of by Lessee, including, without limitation, the cost of any required or necessary repair, cleanup or detoxification and the preparation of any closure or other required plans, and Lessee shall diligently pursue to completion all such work required in connection with the same; excluding, however, any such costs relating to Hazardous Material on the Shopping Center site established to have been caused directly either by use of the site by the Lessor or use of the site by any co-lessee. Lessee shall not cause or permit any Hazardous Material, which is not in the ordinary course of business sold pursuant to the operation of a supermarket in the Phoenix metropolitan area, to be generated, produced, brought upon, used, stored, treated or disposed in or about the Premises, by Lessee, its agents, employees, contractors or sublessees without the prior written consent of Lessor. In no event, however, shall Lessor be required to consent to the installation or use of any storage tanks, in, on or under, the Premises. If Lessor consents to the generation, production, use, storage, treatment or disposal of Hazardous Materials in, on or about the Premises, then, in addition to any other requirement or condition that Lessor may impose in connection with such consent, (i) Lessee shall promptly deliver to Lessor copies of all permits, approvals, filings and reports reflecting the legal and proper generation, production, use, storage, treatment or disposal of Hazardous Materials generated, used, stored, treated or removed from the Premises, and, upon Lessor's request, copies of all hazardous waste manifest relating thereto, and (ii) on the expiration or earlier termination of this Lease, Lessee shall cause all Hazardous Materials arising out of or related to the use or occupancy of the Premises by Lessee or its agents, affiliates, customers, employees, contractors, business associates or assigns to be removed from the Premises or the soils beneath the building and transported for use, storage or disposal in accordance with all applicable laws, regulations and ordinances and Lessee shall provide Lessor with evidence reasonably satisfactory to Lessor of the same; and

(ii) Lessee shall indemnify, defend and hold Lessor, its directors, officers, employees and agents and any successor to Lessor's interest in the Shopping Center harmless from and against any and all claims, judgments, damages, penalties, fines, costs, liabilities or losses (including, without limitation, sums paid in settlement of claims, attorneys' fees, consultant fees and expert fees) and all foreseeable and unforeseeable consequential damages, whether known or unknown, which might directly or indirectly or in whole or in part be caused by, arise out of or be related to Hazardous Material which was created, handled, placed, stored, used, transported or disposed of by Lessee or Hazardous Material with respect to which any court, governmental body or agency having jurisdiction over the Shopping Center holds Lessee responsible or otherwise

requires Lessee to undertake any repair, cleanup, detoxification or other remedial action; excluding, however, Hazardous Material on the Shopping Center site established to have been caused directly either by use of the site by Lessor or use of the site by any co-lessee, or the breach of any representation, warranty or covenant contained herein.

(d) As used herein, the term "**Hazardous Material**" means petroleum products, asbestos, and any other hazardous or toxic substance, material or waste, which is or becomes regulated by any local governmental authority, the State of Arizona or the United States government, whether originating from the Premises or the Shopping Center or migrating, flowing, percolating, diffusing or in any way moving onto or under the Premises or the Shopping Center.

34. MEMORANDUM

The parties hereto have simultaneously with the execution and delivery of this Lease executed and delivered a memorandum lease for the purpose of recording.

35. NO WAIVER

One or more waivers of a breach of any covenant, term or condition of this Lease by either party shall not be construed by the other party as a waiver of a subsequent breach of the same covenant, term or condition. The consent or approval of either party to or of any act by the other party of a nature requiring consent or approval shall not be deemed to waive or render unnecessary consent to or approval of any subsequent similar act. Except as specified otherwise, whenever the consent or approval of either party is required under the Lease, such consent or approval shall not be unreasonably withheld, delayed or conditioned.

36. NO PARTNERSHIP

Nothing herein contained, either in the method of computing rent or otherwise, shall create between the parties hereto, or be relied upon by others as creating, any relationship of partnership, association, joint venture, or otherwise. The sole relationship of the parties hereto shall be that of Lessor and Lessee.

37. GOVERNING LAW

The laws of the State of Arizona shall govern the validity, performance and enforcement of this Lease. Should either party institute legal suit or action for enforcement of any obligation contained herein, it is agreed that the venue of such suit or action shall be in Maricopa County, Arizona. This Lease shall not be construed either for or against Lessor or Lessee, but this Lease shall be interpreted in accordance with the general tenor of the language.

38. NO PRIOR AGREEMENTS

It is understood that there are no oral agreements or oral representations between the parties hereto affecting this Lease, and this Lease supersedes and cancels any and all previous negotiations, arrangements, brochures, agreements or representations and understandings, if any, between the parties hereto or displayed by Lessor to Lessee with respect to the subject matter thereof, and none thereof shall be used to interpret or construe this Lease. There are no other representations, or warranties between the parties and all reliance with respect to representations is solely upon the representations and agreements contained in this document.

39. TITLES FOR CONVENIENCE ONLY

The titles of articles and sections herein are for convenience only and do not in any way define, limit or construe the contents thereof.

40. SUBMISSION OF DOCUMENT

The submission of this document for examination and negotiation does not constitute an offer to lease, or a reservation of, or option for, the Premises; and this document shall become effective and binding only upon execution and delivery hereof by Lessee and by Lessor.

41. INVALIDITY OF PROVISIONS

If any provision of this Lease shall be determined to be void by any court of competent jurisdiction, then such determination shall not affect any other provisions of this Lease and all such other provisions shall remain in full force and effect, and it is the intention of the parties hereto that if any provision of this Lease is capable of two constructions, only one of which would render the provision valid, then the provision shall have the meaning which renders it valid.

42. FORCE MAJEURE

Any prevention, delay or stoppage due to strikes, lockouts, labor disputes, acts of God, inability to obtain labor or materials or reasonable substitutes therefor, governmental restrictions, governmental regulations, governmental controls, enemy or hostile governmental action, civil commotion, fire or other casualty, and other causes beyond the reasonable control of the party obligated to perform any Term, covenant or condition of this Lease (financial inability excepted), shall excuse the performance by such party for a period equal to any such prevention, delay or stoppage, plus such additional period of time as may be reasonably required to enable the party so delayed to repair and/or replace any damage or destruction arising by reason of the occurrence of the force majeure event.

43. BROKER'S FEES

Lessor hereby represents and warrants that it has had no dealings with any broker, agent or finder who is entitled to any real estate commission, finder's fee or other compensation in connection with this Lease for which Lessee will be liable. Lessee hereby represents and warrants that it has had no dealings with any broker, agent or finder who is entitled to any real estate commission, finder's fee or other compensation in connection with this Lease for which Lessor will be liable. Lessor and Lessee hereby agree to indemnify the other against and to hold the other harmless from all damages (including attorneys' fees and costs) resulting from any claims that may be asserted against Lessor or Lessee by any broker, finder, or other person with whom Lessor or Lessee has or purportedly has dealt.

44. LESSOR'S AND LESSEE'S RIGHT TO PAY LIEN CLAIMS

Should any lien claim affecting the Premises or any part thereof be filed or any action affecting the title to Lessor's Property be commenced arising from the act or omission of Lessee, the party receiving notice of such lien or action shall forthwith give the other party written notice thereof. In the event that any such lien or claim of lien does so attach, and is not released within thirty (30) days thereafter, or if Lessee has not posted a statutory bond or other security

reasonably satisfactory to Lessor within said thirty (30) day period, Lessor may, but without obligation to do so, pay and discharge the same and relieve the Premises therefrom, and Lessee agrees to reimburse Lessor upon demand for the amount so paid by Lessor, together with reasonable attorneys' fees plus interest thereon from the date of expenditure until paid at the rate of eighteen percent (18%) per annum. Should any lien claim affecting the Premises or any part thereof be filed or any action affecting the Premises and/or the title to Lessee's Property be commenced arising from the act or omission of Lessor, the party receiving notice of such lien or action shall forthwith give the other party written notice thereof. In the event that any such lien or claim of lien does so attach, and is not released within thirty (30) days thereafter, or if Lessor has not posted a statutory bond or other security reasonably satisfactory to Lessee within said thirty (30) day period, Lessee may, but without obligation to do so, pay and discharge the same and relieve the Premises therefrom, and Lessor agrees to repay and reimburse Lessee upon demand for the amount so paid by Lessee, together with reasonable attorneys' fees plus interest thereon from the date of expenditure until paid at the rate of eighteen percent (18%) per annum.

45. LEGAL AND EQUITABLE RELIEF

Lessee shall have the right to prosecute any proceedings at law or in equity against Lessor and/or against any owner of property within the Shopping Center and/or against any occupant thereof who violates or attempts to violate any of the provisions contained in the Lease and/or in the Memorandum of Lease. The remedies shall include, by way of illustration but not of limitation, ex parte applications for temporary restraining orders, preliminary injunctions and permanent injunctions enjoining any violation or attempted violation(s) and actions for specific performance.

46. NO AGENCY

Lessor and Lessee hereby agree, and notice is hereby given, that Lessee is not the agent of Lessor for the construction, alteration or repair of the Premises which are the obligation of Lessee under this Lease, and that the Lessor is not the agent of Lessee for the construction, alteration or repair of the Premises which is the obligation of Lessor under this Lease.

47. ESTOPPEL CERTIFICATES

Lessee and Lessor agree at any time and from time to time to execute, acknowledge and deliver to the other a statement in writing within fifteen (15) business days following receipt of request therefor certifying to the best of the signatory parties actual knowledge without inquiry (a) that this Lease is unmodified and in full force and effect (or if there have been modifications, that the same is in full force and effect as modified and stating such modifications), (b) the dates to which the Percentage Rent and other charges have been paid in advance, if any, (c) Lessee's acceptance and possession of the Premises, (d) the Commencement Date of the Lease Term, (e) that Lessor or Lessee, as the case may be, is not in default under this Lease (or if Lessor or Lessee claims such a default, the nature thereof), (f) that Lessor or Lessee claims no offsets against the rent, or if Lessee claims an offset, a good faith estimate of the amount thereof, and (g) such other information as Lessor or Lessee or any prospective purchaser or lender shall reasonably require. Lessee may require as a condition precedent to Lessee being obligated to exercise an estoppel that Lessor simultaneously therewith execute a like estoppel for Lessee's benefit. It is intended that any such statement delivered pursuant to this Section may be relied upon by any prospective purchaser, mortgagee or assignee of any mortgagee of the Premises or the Shopping Center. The failure to deliver the certificate

required under this Section within the fifteen (15) business day period specified above shall constitute a default under this Lease. Lessee may require that any estoppel certificate submitted by Lessor or Lessor's lender to Lessee contain, or if not contained, Lessee shall be entitled to insert such provisions as Lessee may reasonably deem appropriate benefiting Lessee including that set forth in **Section 47(e)** above pursuant to which Lessor shall certify by execution of said estoppel certificate and the failure or refusal of Lessor so to do shall entitle Lessee to treat the estoppel certificate so executed and delivered by Lessee to be null, void and of no force and effect.

48. SALE OF PREMISES BY LESSOR

In the event of any sale of the Premises or the Shopping Center by Lessor, or assignment of this Lease, if the Rental Commencement Date has occurred Lessor shall be and is hereby entirely freed and relieved of all liability under any and all of Lessor's covenants and obligations contained in or derived from this Lease arising out of any act, occurrence or omission occurring thereafter provided that the assignee or purchaser at such sale or any subsequent sale of the Premises or assignment of this Lease, has assumed and agreed in writing to carry out any and all of the covenants and obligations of the Lessor under this Lease, in form and substance reasonably acceptable to Lessee, and a copy thereof has been delivered to Lessee.

49. PAYMENT OF RENTAL

Lessee shall pay the rentals herein specified and all other charges to Lessor at the notice address of Lessor set forth in **Section 32**, or to such other person or persons and at such other address or addresses as Lessor shall from time to time designate in writing.

50. LESSEE'S INTEREST RATE

Wherever in this Lease the term "**Lessee's Interest Rate**" is used, the parties acknowledge and agree to be the prime rate of Bank One, Arizona N.A. ("**Bank One**") plus three percent (3%) per annum, as such prime rate exists on the date on which the expenditure of money was made by Lessee. In the event Bank One ceases to exist, then the parties shall select a mutually acceptable bank or, if the parties are unable to agree, then such bank shall be that designated by the presiding judge of the Superior Court in and for the County of Maricopa, State of Arizona.

51. TIME IS OF THE ESSENCE

Time is of the essence with respect to any and all payments and/or performances required by Lessor and Lessee pursuant to the provisions of this Lease.

52. SUCCESSORS

The terms of this Lease shall bind and inure to the benefit of the parties hereto, and their respective heirs, legal representatives, successors and assigns.

53. GENERAL PROVISIONS

(a) Each easement, covenant and restriction on a parcel shall be a burden on the Shopping Center, shall run with the land and shall be binding upon Lessor, Lessee, their heirs, personal representatives, successors and assigns of the parties hereto.

(b) In construing the provisions of this Lease and wherever the context so requires, the use of a gender shall include all other genders, the use of the singular shall include the plural, and the use of the plural shall include the singular.

(c) In the event any party to this Lease is composed of more than one person, the obligations of said party shall be joint and several.

(d) This Lease is not intended to create, nor shall it be in any way interpreted or construed to create, any third-party beneficiary rights in any person not a party hereto unless otherwise expressly provided herein.

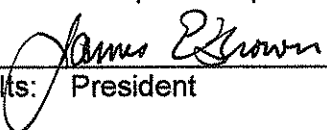
54. PAGES AND EXHIBITS

This Lease consists of 28 pages, numbered 1 through 28, plus Exhibits "A" - "H" inclusive.

IN WITNESS WHEREOF, the parties hereto have subscribed their names and executed this Lease.

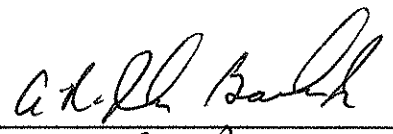
LESSOR:

EAGAR MUNICIPAL PROPERTY
CORPORATION,
an Arizona non-profit corporation

By: 
Its: President

LESSEE:

BASHAS' INC.,
an Arizona corporation

By: 
Its: S. R. V. P.

AGREEMENT

Date: April 8, 2002

Parties: Bashas' Inc., an Arizona corporation ("Bashas")
Frontier State Bank ("Lender")

RECITALS

A. Bashas' has entered into a Lease agreement dated April 8, 2002 (the "Lease") with EAGAR MUNICIPAL PROPERTY CORPORATION, an Arizona non-profit corporation ("Lessor") pursuant to which Lessor leased to Bashas' the premises designated as Market on the site plan attached hereto as Exhibit "A" and by this reference incorporated herein (the "Premises").

B. Lender is the owner and holder of that certain Promissory Note dated September 3, 1999 in the original principal sum of Two Hundred Twenty Two Thousand Six Hundred Ninety Dollars and Twenty Cents (\$222,690.20). (the "Note") which said Note has been executed by Lessor.

C. Lessor, as debtor, further executed a Security Agreement dated September 3, 1999 (the "Security Agreement") granting to Lender a security interest in certain personal property described on Exhibit "B" attached hereto and by this reference incorporated herein. The personal property which remains within the Premises and which therefore is the subject matter of this Agreement is the personal property described on Exhibit "B-1" attached hereto and by this reference incorporated herein (the "Collateral").

D. The Collateral is located within the Leased Premises and pursuant to the Lease, Lessor has also leased to Bashas' the Collateral.

E. The parties now desire to make certain agreements with respect to the Collateral among other things.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained the parties hereto agree and covenant as follows:

1. In the event of any default in payment and/or performance required under the Note and/or under the Security Agreement with respect thereto or under any other agreement, document or writing of any kind or nature which would entitle Lender to exercise any rights and/or remedies with respect to the Collateral, (the "Other Agreements") Lender shall transmit (1) a copy of any notice of default or otherwise that Lender transmits to Lessor and (2) a separate written notice from Lender to Bashas' specifying that a default has occurred, specifying the amount of money necessary to cure the default in the event the default is curable by the payment of monies and/or specifying the performance required in the event the default consists of failure of Lessor to perform any term, condition or covenant incumbent upon Lessor to perform pursuant to the provisions of the Note, Security Agreement or the Other Agreements.

2. With respect to any defaults which are curable by the payment of monies, Bashas' shall have fifteen (15) business days after Bashas' receipt of said notice in which to cure the default by payment of the money or monies otherwise required to cure the default or in the event the default is not curable by the payment of monies then Bashas' shall have thirty (30) days after Bashas' receipt of said notice within which to commence the curing and such additional period of time as may be required in order to cause the cure to be completed so long as Bashas' is using reasonable diligence with respect thereto.

3. Lender will accept cure by Bashas'.

4. At Bashas' option, exercisable at any time by written notice from Bashas' to Lender, Bashas' shall be entitled to purchase the Note, in which event the Note, the Security Agreement and the Other Agreements with respect thereto will be assigned, transferred and set over by Lender to Bashas' without recourse and Lender shall execute such documents, instruments or writings as may be reasonably required by Bashas' in connection therewith.

5. By acceptance and approval of these presents, Lessor hereby acknowledges that any and all sums of money incurred by Bashas' in connection with curing a default under the Note, the Security Agreement or the Other Agreements together with interest thereon at the Lessee's interest rate as that term is defined in the Lease, shall become immediately due and payable by Lessor to Bashas' and if not so paid within five (5) days of the date of demand therefore, Bashas' shall have the right in addition to any other right or remedy that Bashas' may have at law or in equity to offset all sums so incurred by Bashas' in connection with curing the default together with interest thereon at the Lessee's interest rate from and against rental and all other sums otherwise due and payable by Bashas' to Lessor in connection with the Lease.

6. Lender acknowledges that not all of the personal property which was or may have been covered by the Security Agreement is or will be located within the Premises when Bashas' opens for business to the public. Lender acknowledges that Bashas' shall not have any duty, responsibility or obligation of any kind or nature with respect to any items of personal property listed on **Exhibit "B"** but not listed on **Exhibit "B-1"**.

7. All notices required or permitted to be given hereunder shall be in writing and may be given in person or by United States mail, by delivery service or by electronic transmission. Any notice directed to a party to this Agreement shall be effective on the earliest of the following: (i) actual receipt by that party; (ii) delivery to the designated address of that party addressed to that party; or (iii) be given by certified or registered United States mail, seventy two (72) hours after deposit with the United States Postal Service, postage pre-paid, addressed to that party at its designated address. The designated address of party shall be the address of that party shown at the beginning of this Agreement or at such other address as that party may from time to time specify by notice to the other party. A copy of any notice to Bashas' shall also be sent to Mohr, Hackett, Pederson, Blakley & Randolph, Attention: Gordon A. Mohr, Legal Notice 286-913 - 2800 N. Central Ave., Suite 1100, Phoenix, Arizona 85004.

8. The term "Lender" shall be deemed to include the party executing this document as the Lender and its successors and assigns including anyone who shall have succeeded to Lender's interest.

9. This Agreement may not be modified orally or in any manner other than by an agreement in writing signed by the parties hereto or their respective successors in interest.

10. This Agreement shall inure to the benefit of and be binding upon the parties hereto, their successors and assigns.

11. Each covenant, condition and provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law but if any covenant, condition or provision of this Agreement shall be held to be void or invalid, the same shall not effect the remainder hereof which shall be effective as though the void or invalid covenant, condition or provision had not been contained herein.

12. This Agreement may be executed in any number of counterparts and each counterpart executed by any of the undersigned, together with all other counterparts so executed shall constitute a single instrument and agreement of the parties.

13. Time is of the essence with respect to this Agreement.

IN WITNESS WHEREOF, the undersigned have executed these presents as of the day and year first above written.

BASHAS' INC.,
an Arizona corporation

By: 

Its: SRIP.

FRONTIER STATE BANK

By: 

Its: Asst. Vice Pres.

Accepted and approved this 5 day of
April, 2002

EAGAR MUNICIPAL PROPERTY
CORPORATION,
an Arizona non-profit corporation

By: 

Its: President

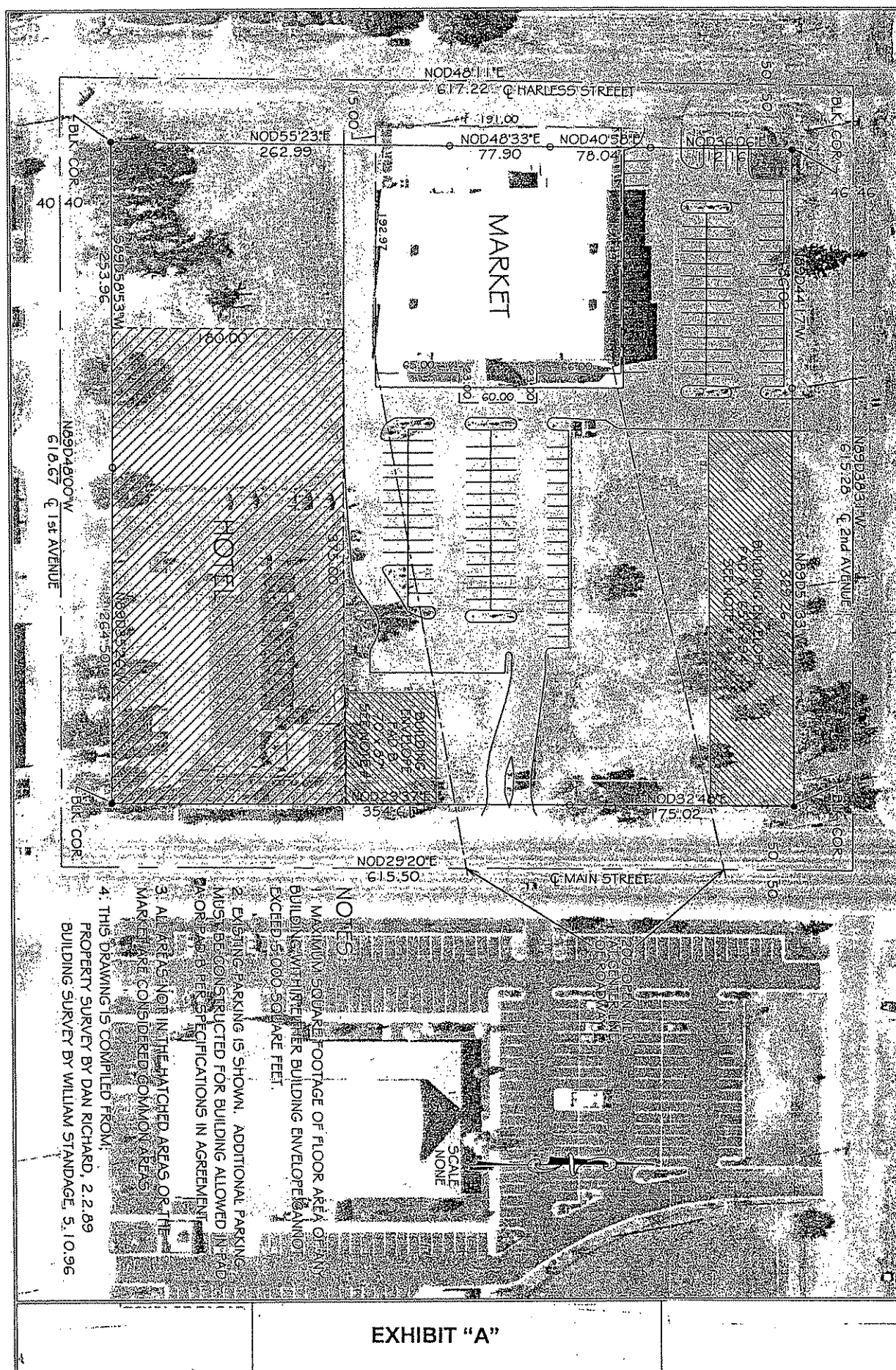


EXHIBIT "B"

Town of Eagar
Randall's I.G.A. Equipment Inventory

Tag Number	Location	Qty	Description	Model	Serial Number
A354	Back Room		Receiving Desk		
A355	Back Room		8' Stainless Steel Table		
A364	Back Room		8' Stainless Steel Table		
A365	Back Room		Crown Pallet Jack		
	Back Room		Bakery Rack		
	Back Room		4 Wheel Cart		
	Back Room		8' Aluminum Table		
	Bakery		10'X6' Bakery Walk In Freezer		
	Bakery	7	3 Shelf Racks		
A25	Bakery		Heatcraft 3 Fan Coil	ECP41102	T93H20549
	Bakery		10'X6' Bakery Walk In Cooler		
A26	Bakery		Heatcraft 3 Fan Coil	ACP81351	T93H20312
A1	Compressor Room		Rack B-Hussman Med Temp		
A2	Compressor Room		Copeland Compressor	3DP3100LTFD	96B05060S
A3	Compressor Room		Copeland Compressor	3DA30750TFD	89I01004
A4	Compressor Room		Rack A-Hussman Med Temp		
A5	Compressor Room		Copeland Compressor	3DA30750TFD	93G03753
A7	Compressor Room		Copeland Compressor	3DA30750TFD	93G03755
A8	Compressor Room		Copeland Compressor	3DP3100LTFD	96B05096
A9	Compressor Room		Rack C-Hussman Low Temp		
A10	Compressor Room		Copeland Compressor	3DS3100ETFD	95C77115
A11	Compressor Room		Copeland Compressor	3DS31000TFD	93D02375
A12	Compressor Room		Copeland Compressor	3DS31000TFD	93D65031
A13	Compressor Room		Copeland Compressor	3DS31000TFD	93E03541
A14	Compressor Room		Copeland Compressor	3DS31000TFD	93C05139
	Compressor Room	3	Platter Carts		
A349	Countdown Room		US Security 2 Compartment Drop Safe		788900
	Countdown Room		10'X2' Counter/Cabinets		
	Countdown Room	6	Cash Tills		
	Countdown Room		5' Wall Cabinets		
	Dairy		17'X22' Walk In Dairy Cooler		
A17	Dairy		Larkin 5 Fan Coil	ACP62101	86611581
A18	Dairy		Larkin 3 Fan Coil	ACP61261	8864960115
A353	Dairy	8	Anthony Glass Doors		
	Deli	3	3 Shelf Metal Racks		
	Deli		13'X8' Walk In Cooler		
A15	Deli		Bohn 5 Fan Coil	LLE1702F	DLA26
A151	Deli Backroom		Ubert Rotisserie		
A152	Deli/Bakery		20qt Pan Western Mixer	A20	B85022
A153	Deli/Bakery		8' Stainless Steel Polytop Table		
A154	Deli/Bakery		8' Stainless Steel Table		
A155	Deli/Bakery		10' 3 Compartment Sink		
A156	Deli/Bakery		Hand Wash Sink		
	Deli/Bakery	8	4' Aluminum Dunnage Racks		
A157	Deli/Bakery		Oliver Bread Slicer	797G	111157
A158	Deli/Bakery		Enclosed Rolling Pan Rack		
A159	Deli/Bakery		Henny Penny Fryer	600C	GA118IC
A160	Deli/Bakery		DCS Oven	FSC01	41096815
A161	Deli/Bakery		DCS Oven	FSC01	41196586
A162	Deli/Bakery		Wilder Proof Box		
A163	Deli/Bakery		8' Stainless Steel Polytop Table		
A164	Deli/Bakery		Hobart Meat Slicer	162E	561004855
A165	Deli/Bakery		Wrapping Station		
A166	Deli/Bakery		8' Hill Refrigerated Service Case	CSM8C	6001199
A167	Deli/Bakery		8' Hill Refrigerated Service Case	CSM8C	6001198
A168	Deli/Bakery		8' Hussman Hot Food Case	VHF8V	94470233
A169	Deli/Bakery		8' Bagel Display Case		
A170	Deli/Bakery		8' Columbus Donut Case		079734

EXHIBIT "B"

Town of Eagar

Randall's I.G.A. Equipment Inventory

Tag Number	Location	Qty	Description	Model	Serial Number
A181	Deli/Bakery	2	10'X3' Bread Rack		
	Deli/Bakery		Enclosed Rolling Pan Racks		
	Deli/Bakery		Oven Rolling Pan Rack		
A404	Employee Lounge	2	18 Compartment Locker		
A405	Employee Lounge		18 Compartment Locker		
A406	Employee Lounge		18 Compartment Locker		
	Employee Lounge	8	Tables		
	Employee Lounge		Chairs		
A301	Front End		Reynolds Checkstand	UL2	N/A
A302	Front End		Reynolds Checkstand	UL2	6048
A303	Front End		Reynolds Checkstand	UL2	5974
A304	Front End		Reynolds Checkstand	UL2	N/A
A305	Front End		Reynolds Checkstand	UL2	5977
A306	Front End		Reynolds Checkstand	UL2	5985
A307	Front End		Acer Monitor	7134T	72400812P3T1G1P
A308	Front End		Acer Monitor	7134T	72400785P3T1G1P
A309	Front End		Acer Monitor	7134T	72400820P3T1G1P
A310	Front End		Acer Monitor	7134T	72400857P3T1G1P
A311	Front End		Acer Monitor	7134T	72400822P3T1G1P
A312	Front End		Fujitsu ICL Register Controller		
A313	Front End		Fujitsu ICL Register Controller		
A314	Front End		Fujitsu ICL Register Controller		
A315	Front End		Fujitsu ICL Register Controller		
A316	Front End		Fujitsu ICL Register Controller		
A317	Front End		Cash Drawer	54258002	003123
A318	Front End		Cash Drawer	54258002	024114
A319	Front End		Cash Drawer	54258002	022617
A320	Front End		Cash Drawer	54258002	022616
A321	Front End		Cash Drawer	54258002	022715
A322	Front End		A Open Secondary Controller	BG95AP53	273412653
A323	Front End		A Open Secondary Controller	BG95AP53	273412649
A324	Front End		A Open Secondary Controller	BG95AP53	273412652
A325	Front End		A Open Secondary Controller	BG95AP53	273412650
A326	Front End		A Open Secondary Controller	BG95AP53	273412648
A327	Front End		Fujitsu ICL Scanner/Scale	ORION9500	20825172TY
A328	Front End		Fujitsu ICL Scanner/Scale	ORION9500	20824902TY
A329	Front End		Fujitsu ICL Scanner/Scale	ORION9500	20825112TY
A330	Front End		Fujitsu ICL Scanner/Scale	ORION9500	20824912TY
A331	Front End		Fujitsu ICL Scanner/Scale	ORION9500	20824832TY
A332	Front End		Fujitsu ICL Scanner/Scale	ORION9500	20825102TY
A333	Front End		ICL Keyboard	9530	0033336
A334	Front End		ICL Keyboard	9530	0012571
A335	Front End		ICL Keyboard	9530	0033375
A336	Front End		ICL Keyboard	9530	0033397
A337	Front End		ICL Keyboard	9530	0033391
A338	Front End		Axiohm Receipt Printer	42059001	0232498584
A339	Front End		Axiohm Receipt Printer	112059001	0232498592
A340	Front End		Axiohm Receipt Printer	112059001	0232498591
A341	Front End		Axiohm Receipt Printer	112059001	0232498594
A342	Front End		Axiohm Receipt Printer	112059001	0232498593
A366	Front End		Hussman Ice Display	IS0671FR5	91305305
	Grocery	12	Lozier-260' Double Side Gondolas		
	Grocery		Lozier-88' Single Side Gondolas		
	Grocery		Lozier-195' Double Side Gondolas		
	Grocery		Lozier-30' Double Side Gondolas		
	Grocery		Lozier-12' Pegboard		
	Grocery		Lozier-23' Single Side Gondola		
	Grocery		Aluminum Dunnage Racks		
	Grocery		13'X20' Grocery Walk In Cooler		

EXHIBIT "B"

Town of Eagar
Randall's I.G.A. Equipment Inventory

Tag Number	Location	Qty	Description	Model	Serial Number
A24	Grocery		Larkin 4 Fan Coil	ACP61701	8563518102
	Grocery		4 Wheel Cart		
A28	Grocery		12' Hill 5 Door Reach In Case	ZR5GF12	342939
A29	Grocery		12' Hill 5 Door Reach In Case	ZR5GF12	342941
A30	Grocery		8' Hill 3 Door Reach In Case	ZR3GCK	350029
A31	Grocery		8' Hill 3 Door Reach In Case	ZR3GF	342640
A32	Grocery		8' Hill 3 Door Reach In Case	ZR3GF	342639
A33	Grocery		12' Hill 5 Door Reach In Case	ZR5GFK	
A34	Grocery		10' Hill 4 Door Reach In Case	ZR4GFK	
A35	Grocery		12' Hill 5 Door Reach In Case	ZR5GFK	
A36	Grocery		12' Hill 5 Door Reach In Case	ZR5GFK	
	Liquor		10'X22" Liquor Walk In Cooler		
A27	Liquor		Larkin 6 Fan Coil	ACP83101	91598231
A182	Meat		12' Tyler Multideck Refrigerated Case	DVC12M	786579
A183	Meat		8' Tyler Multideck Refrigerated Case	DVC8R	786677
A184	Meat		8' Hussman Reach In Freezer Case		
A185	Meat		12' Tyler Multideck Refrigerated Case	DHM12	109450
A186	Meat		12' Tyler Multideck Refrigerated Case	DHM12	
A187	Meat		12' Tyler Multideck Refrigerated Case	DHM12	166190
A188	Meat		12' Tyler Reach In Refrigerated Case		182127
A189	Meat		8' Tyler Reach In Refrigerated Case		
A190	Meat		12' Tyler Multideck Refrigerated Case	DAS12H	W140644
A191	Meat		12' Tyler Multideck Refrigerated Case	DAS12H	140666
A192	Meat		12' Tyler Multideck Refrigerated Case	OAS12H	154692
A193	Meat		8' Stainless Steel Polytop Table		
A194	Meat		Hobart Meat Slicer	57010	2704508
	Meat	6	6' Boat Racks		
A195	Meat		8' 3 Compartment Sink		
A196	Meat		Hobart Fat Tester	F101	311011862
A197	Meat		Desk		
A198	Meat		6' Stainless Steel Polytop Cutting Table		
A199	Meat		6' Stainless Steel Polytop Cutting Table		
A200	Meat	2	Platter Racks		
	Meat		6' Stainless Steel Polytop Cutting Table		
A351	Meat		12' Tyler 5 Glass Door Freezer	DLG12C	165547
A352	Meat		12' Tyler 5 Glass Door Freezer	DLG12C	165580
	Meat	5	Meat Platter Racks		
	Meat		8'X15" Walk In Meat Freezer		
	Meat		Heatcraft 3 Fan Coil	ECM6772	TXF2233
	Meat	13	Aluminum Dunnage Racks		
	Meat		26'X15' Walk In Meat Cooler		
	Meat		Heatcraft 3 Fan Coil	ECM6772	
	Meat		Heatcraft 3 Fan Coil	ECM6772	
	Meat	4	Platter Carts		
A200	Meat		Hollymatic 180 Meat Grinder		18073241
A21	Meat		Tyler 2 Fan Coil	LAA740	142533E91
A22	Meat		Tyler 2 Fan Coil	LAA740	142530E91
A23	Meat		Tyler 2 Fan Coil	LAA740	142532E91
A356	Outside Dock		Nichol Baler	EA30606HDFS6	BD7686
A357	Outside Dock		Hobart Scale	1871	31382737
A358	Outside Dock		Hobart Scale	1871	31369430
A359	Outside Dock		Hobart Scale	1871	31382880
A360	Outside Dock		Hobart Scale	1871	31437266
A361	Outside Dock		Deli Warmer		
	Outside Dock		Bakery Flour Bin (1 broken wheel)		
A343	Pharmacy		Acer Monitor	7134T	72400786P3T1G1P
A344	Pharmacy		Fujitsu ICL Register Controller	9535	U028647
A345	Pharmacy		Cash Drawer	S4258002	022780
A346	Pharmacy		A Open Secondary Controller	BG95AP53	273412651

EXHIBIT "B"

Town of Eagar

Randall's I.G.A. Equipment Inventory

Tag Number	Location	Qty	Description	Model	Serial Number
A347	Pharmacy		ICL Keyboard	9530	0033389
A348	Pharmacy		Hobart Scale	1871M	431989
	Pharmacy		43'X2' Counter/Cabinets		
	Pharmacy		12'X2' Counter/Shelves		
A171	Produce		12' Hussman Island Case	DSRP04	DMC6526
A172	Produce		8' Tyler Produce Case	SVH	
A173	Produce		8' Tyler Produce Case	SVH	
A174	Produce		8' Tyler Produce Case	SVH	
A175	Produce		8' Tyler Produce Case	SVH	
A176	Produce		12' Tyler Produce Case		
A177	Produce		12' Tyler Produce Case		
A178	Produce		12' Tyler Produce Case		
A179	Produce		12' Tyler Produce Case	W232909	
A180	Produce		True 2 Sliding Door Floral Case	GEM47FC	427504
	Produce	14	Oak Produce Displays		
	Produce		14'X17 Walk In Cooler		
A16	Produce		Russell 5 Fan Coil		
A374	Produce Back Room		8' Produce 3 Compartment Sink W/Disposal		
A362	Produce Back Room		Produce Crystal Tip Ice Machine		
A363	Produce Back Room		Produce Heat Wrapper	104A	
	Roof		Highland Mayfield Cooling Tower		
	Roof		Highland Mayfield Cooling Tower		
	Roof		Highland Mayfield Cooling Tower		
A350	Upstairs Office		Acer Monitor	7134T	724008563T1G1P
A401	Upstairs Office		A Open Secondary Controller	BG95AP53	273412647
A402	Upstairs Office		Acer Keyboard	6511AW	K6575215921S
A403	Upstairs Office		Worthington Handheld Data Unit	LT71	

EXHIBIT "B-1"

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Town of Eagar

Randall's I.G.A. Equipment Inventory

Tag Number	Location	Qty	Description	Model	Serial Number
A354	Back Room		Receiving Desk		
A355	Back Room		8' Stainless Steel Table		
A364	Back Room		8' Stainless Steel Table		
A365	Back Room		Crown Pallet Jack		
	Back Room		Bakery Rack		
	Back Room		4 Wheel Cart		
	Back Room		8' Aluminum Table		
	Bakery		10'X6' Bakery Walk In Freezer		
	Bakery	7	3 Shelf Racks		
A25	Bakery		Heatcraft 3 Fan Coil	ECP41102	T93H20549
	Bakery		10'X6' Bakery Walk In Cooler		
A26	Bakery		Heatcraft 3 Fan Coil	ACP81351	T93H20312
A1	Compressor Room		Rack B-Hussman Med Temp		
A2	Compressor Room		Copeland Compressor	3DP3100LTFD	96805060S
A3	Compressor Room		Copeland Compressor	3DA30750TFD	89101004
A4	Compressor Room		Rack A-Hussman Med Temp		
A5	Compressor Room		Copeland Compressor	3DA30750TFD	93G03753
A7	Compressor Room		Copeland Compressor	3DA30750TFD	93G03755
A8	Compressor Room		Copeland Compressor	3DP3100LTFD	96805096
A9	Compressor Room		Rack C-Hussman Low Temp		
A10	Compressor Room		Copeland Compressor	3DS3100ETFD	95C77115
A11	Compressor Room		Copeland Compressor	3DS31000TFD	93D02375
A12	Compressor Room		Copeland Compressor	3DS31000TFD	93D65031
A13	Compressor Room		Copeland Compressor	3DS31000TFD	93E03541
A14	Compressor Room		Copeland Compressor	3DS31000TFD	93C05139
	Compressor Room	3	Platter Carts		
A349	Countdown Room		US Security 2 Compartment Drop Safe		788900
	Countdown Room		10'X2' Counter/Cabinets		
	Countdown Room	6	Cash Tills		
	Countdown Room		5' Wall Cabinets		
	Dairy		17'X22' Walk In Dairy Cooler		
A17	Dairy		Larkin 5 Fan Coil	ACP62101	86611581
A18	Dairy		Larkin 3 Fan Coil	ACP61261	8864960115
A353	Dairy	8	Anthony Glass Doors		
	Deli	3	3 Shelf Metal Racks		
	Deli		13'X8' Walk In Cooler		
A15	Deli		Bohn 5 Fan Coil	LLE1702F	DLA26
A151	Deli Backroom		Ubert Rotisserie		
A152	Deli/Bakery		20qt Pan Western Mixer	A20	885022
A153	Deli/Bakery		8' Stainless Steel Polytop Table		
A154	Deli/Bakery		6' Stainless Steel Table		
A155	Deli/Bakery		10' 3 Compartment Sink		
A156	Deli/Bakery		Hand Wash Sink		
	Deli/Bakery	8	4' Aluminum Dunnage Racks		
A157	Deli/Bakery		Oliver Bread Slicer	797G	111157
A158	Deli/Bakery		Enclosed Rolling Pan Rack		
A159	Deli/Bakery		Henry Penny Fryer	600C	GA1181C
A160	Deli/Bakery		DCS Oven	FSC01	41096815
A161	Deli/Bakery		DCS Oven	FSC01	41196586
A162	Deli/Bakery		Wilder Proof Box		
A163	Deli/Bakery		8' Stainless Steel Polytop Table		
A164	Deli/Bakery		Hobart Meat Slicer	162E	561004855
A165	Deli/Bakery		Wrapping Station		
A166	Deli/Bakery		8' Hill Refrigerated Service Case	CSM8C	6001199
A167	Deli/Bakery		8' Hill Refrigerated Service Case	CSM8C	6001198
A168	Deli/Bakery		8' Hussman Hot Food Case	VHF8V	94470233
A169	Deli/Bakery		8' Bagel Display Case		
A170	Deli/Bakery		8' Columbus Donut Case		079734

EXHIBIT "B-1"

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Town of Eagar
Randall's I.G.A. Equipment Inventory

Tag Number	Location	Qty	Description	Model	Serial Number
A181	Deli/Bakery		10'X3' Bread Rack		
	Deli/Bakery	2	Enclosed Rolling Pan Racks		
	Deli/Bakery		Oven Rolling Pan Rack		
A404	Employee Lounge		18 Compartment Locker		
A405	Employee Lounge		18 Compartment Locker		
A406	Employee Lounge		18 Compartment Locker		
	Employee Lounge	2	Tables		
	Employee Lounge	8	Chairs		
A301	Front End		Reynolds Checkstand	UL2	N/A
A302	Front End		Reynolds Checkstand	UL2	6048
A303	Front End		Reynolds Checkstand	UL2	5974
A304	Front End		Reynolds Checkstand	UL2	N/A
A305	Front End		Reynolds Checkstand	UL2	5977
A306	Front End		Reynolds Checkstand	UL2	5985
A307	Front End		Acer Monitor	7134T	72400812P3T1G1P
A308	Front End		Acer Monitor	7134T	72400785P3T1G1P
A309	Front End		Acer Monitor	7134T	72400820P3T1G1P
A310	Front End		Acer Monitor	7134T	72400857P3T1G1P
A311	Front End		Acer Monitor	7134T	72400822P3T1G1P
A312	Front End		Fujitsu ICL Register Controller		
A313	Front End		Fujitsu ICL Register Controller		
A314	Front End		Fujitsu ICL Register Controller		
A315	Front End		Fujitsu ICL Register Controller		
A316	Front End		Fujitsu ICL Register Controller		
A317	Front End		Cash Drawer	54258002	003123
A318	Front End		Cash Drawer	54258002	024114
A319	Front End		Cash Drawer	54258002	022617
A320	Front End		Cash Drawer	54258002	022616
A321	Front End		Cash Drawer	54258002	022715
A322	Front End		A Open Secondary Controller	BG95AP53	273412659
A323	Front End		A Open Secondary Controller	BG95AP53	273412649
A324	Front End		A Open Secondary Controller	BG95AP53	273412652
A325	Front End		A Open Secondary Controller	BG95AP53	273412650
A326	Front End		A Open Secondary Controller	BG95AP53	273412648
A327	Front End		Fujitsu ICL Scanner/Scale	ORION9500	20825172TY
A328	Front End		Fujitsu ICL Scanner/Scale	ORION9500	20824902TY
A329	Front End		Fujitsu ICL Scanner/Scale	ORION9500	20825112TY
A330	Front End		Fujitsu ICL Scanner/Scale	ORION9500	20824912TY
A331	Front End		Fujitsu ICL Scanner/Scale	ORION9500	20824832TY
A332	Front End		Fujitsu ICL Scanner/Scale	ORION9500	20825102TY
A333	Front End		ICL Keyboard	9530	0033336
A334	Front End		ICL Keyboard	9530	0012571
A335	Front End		ICL Keyboard	9530	0033375
A336	Front End		ICL Keyboard	9530	0033397
A337	Front End		ICL Keyboard	9530	0033391
A338	Front End		Axiom Receipt Printer	42059001	0232498584
A339	Front End		Axiom Receipt Printer	112059001	0232498592
A340	Front End		Axiom Receipt Printer	112059001	0232498591
A341	Front End		Axiom Receipt Printer	112059001	0232498594
A342	Front End		Axiom Receipt Printer	112059001	0232498593
A366	Front End		Hussman Ice Display	IS0671FR5	91305305
	Grocery		Lozier-260' Double Side Gondolas		
	Grocery		Lozier-88' Single Side Gondolas		
	Grocery		Lozier-195' Double Side Gondolas		
	Grocery		Lozier-30' Double Side Gondolas		
	Grocery		Lozier-12' Pegboard		
	Grocery		Lozier-23' Single Side Gondola		
	Grocery	12	Aluminum Dunnage Racks		
	Grocery		13'X20' Grocery Walk In Cooler		

EXHIBIT "B-1"

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Town of Eagar
Randall's I.G.A. Equipment Inventory

Tag Number	Location	Qty	Description	Model	Serial Number
A24	Grocery		Larkin 4 Fan Coil	ACP61701	8563518102
	Grocery		4 Wheel Cart		
A28	Grocery		12' Hill 5 Door Reach In Case	ZR5GF12	342939
A29	Grocery		12' Hill 5 Door Reach In Case	ZR5GF12	342941
A30	Grocery		8' Hill 3 Door Reach In Case	ZR3GCK	350029
A31	Grocery		8' Hill 3 Door Reach In Case	ZR3GF	342640
A32	Grocery		8' Hill 3 Door Reach In Case	ZR3GF	342639
A33	Grocery		12' Hill 5 Door Reach In Case	ZR5GFK	
A34	Grocery		10' Hill 4 Door Reach In Case	ZR4GFK	
A35	Grocery		12' Hill 5 Door Reach In Case	ZR5GFK	
A36	Grocery		12' Hill 5 Door Reach In Case	ZR5GFK	
	Liquor		10'X22" Liquor Walk In Cooler		
A27	Liquor		Larkin 6 Fan Coil	ACP83101	91598231
A182	Meat		12' Tyler Multideck Refrigerated Case	DVC12M	786579
A183	Meat		8' Tyler Multideck Refrigerated Case	DVC8R	786677
A184	Meat		8' Hussman Reach In Freezer Case		
A185	Meat		12' Tyler Multideck Refrigerated Case	DHM12	109450
A186	Meat		12' Tyler Multideck Refrigerated Case	DHM12	
A187	Meat		12' Tyler Multideck Refrigerated Case	DHM12	166190
A188	Meat		12' Tyler Reach In Refrigerated Case		182127
A189	Meat		8' Tyler Reach In Refrigerated Case		
A190	Meat		12' Tyler Multideck Refrigerated Case	DAS12H	W140644
A191	Meat		12' Tyler Multideck Refrigerated Case	DAS12H	140666
A192	Meat		12' Tyler Multideck Refrigerated Case	DAS12H	154692
A193	Meat		8' Stainless Steel Polytop Table		
A194	Meat		Hobart Meat Slicer	57010	2704508
	Meat	6	6' Boat Racks		
A195	Meat		8' 3 Compartment Sink		
A196	Meat		Hobart Fat Tester	F101	311011862
A197	Meat		Desk		
A198	Meat		6' Stainless Steel Polytop Cutting Table		
A199	Meat		6' Stainless Steel Polytop Cutting Table		
A200	Meat	2	Platter Racks		
	Meat		6' Stainless Steel Polytop Cutting Table		
A351	Meat		12' Tyler 5 Glass Door Freezer	DLG12C	165547
A352	Meat		12' Tyler 5 Glass Door Freezer	DLG12C	165580
	Meat	5	Meat Platter Racks		
	Meat		8'X15" Walk In Meat Freezer		
	Meat		Heatcraft 3 Fan Coil	ECM6772	TXF2233
	Meat	13	Aluminum Dunnage Racks		
	Meat		26'X15' Walk In Meat Cooler		
	Meat		Heatcraft 3 Fan Coil	ECM6772	
	Meat		Heatcraft 3 Fan Coil	ECM6772	
	Meat	4	Platter Carts		
A200	Meat		Hollymatic 180 Meat Grinder		18073241
A21	Meat		Tyler 2 Fan Coil	LAA740	142533E91
A22	Meat		Tyler 2 Fan Coil	LAA740	142530E91
A23	Meat		Tyler 2 Fan Coil	LAA740	142532E91
A356	Outside Dock		Nichol Saler	EA30806HDFS6	807686
A357	Outside Dock		Hobart Scale	1871	31382797
A358	Outside Dock		Hobart Scale	1871	31369430
A359	Outside Dock		Hobart Scale	1871	31382880
A360	Outside Dock		Hobart Scale	1871	31437266
A361	Outside Dock		Deil Warmer		
	Outside Dock		Bakery Flour Bin (1 broken wheel)		
A343	Pharmacy		Acer Monitor	7134T	72400786P3T1G1P
A344	Pharmacy		Fujitsu ICL Register Controller	9535	U028647
A345	Pharmacy		Cash Drawer	S4258002	022780
A346	Pharmacy		A Open Secondary Controller	8G35AP53	273412051

EXHIBIT "B-1"

Page 4 of 4

Town of Eagar
Randall's I.G.A. Equipment Inventory

Tag Number	Location	Qty	Description	Model	Serial Number
A347	Pharmacy		ICL Keyboard	9530	8833389
A348	Pharmacy		Hobart Scale	1871M	431989
	Pharmacy		43'X2' Counter/Cabinets		
	Pharmacy		12'X2' Counter/Shelves		
A171	Produce		12' Hussman Island Case	DSRP04	DMC6526
A172	Produce		8' Tyler Produce Case	SVH	
A173	Produce		8' Tyler Produce Case	SVH	
A174	Produce		8' Tyler Produce Case	SVH	
A175	Produce		8' Tyler Produce Case	SVH	
A176	Produce		12' Tyler Produce Case		
A177	Produce		12' Tyler Produce Case		
A178	Produce		12' Tyler Produce Case		
A179	Produce		12' Tyler Produce Case	W232909	
A180	Produce		True 2 Sliding Door Floral Case	GEM47FC	427504
	Produce	14	Oak Produce Displays		
	Produce		14'X17 Walk In Cooler		
A16	Produce		Russell 5 Fan Coil		
A374	Produce Back Room		8' Produce 3 Compartment Sink W/Disposal		
A362	Produce Back Room		Produce Crystal Tip Ice Machine		
A363	Produce Back Room		Produce Heat Wrapper	104A	
	Roof		Highland Mayfield Cooling Tower		
	Roof		Highland Mayfield Cooling Tower		
	Roof		Highland Mayfield Cooling Tower		
A360	Upstairs Office		Acer Monitor	7134T	7240055037101P
A401	Upstairs Office		A Open Secondary Controller	BG95AP53	273412647
A402	Upstairs Office		Acer Keyboard	6511AW	K6575215921S
A403	Upstairs Office		Worthington Handheld Data Unit	LT71	

RECORDING REQUESTED BY
AND WHEN RECORDED, MAIL TO:

Mohr, Hackett, Pederson, Blakley
& Randolph, P.C.
2800 North Central Avenue, Suite 1100
Phoenix, Arizona 85004
Attention: Gordon A. Mohr
Legal Notices File No.: 286-913

**MEMORANDUM OF SHOPPING CENTER LEASE
AND RESTRICTIVE COVENANTS**

Town of Eagar, Arizona

THIS MEMORANDUM OF SHOPPING CENTER LEASE AND RESTRICTIVE COVENANTS is entered into as of April 8, 2002, between BASHAS' INC., an Arizona corporation ("Lessee"), and EAGAR MUNICIPAL PROPERTY CORPORATION, An Arizona non-profit corporation ("Lessor").

1. **Lease.** Lessor and Lessee have entered into a lease dated as of April 8, 2002 (the "Lease"), pursuant to which Lessor leased to Lessee the Premises described in Section 2 below.

2. **Premises.** Lessor hereby demises to Lessee and Lessee hereby leases from Lessor, for the Term of the Lease and subject to the agreements therein set forth, the premises designated as "Market" on the site plan attached hereto as Exhibit "A" ("Site Plan") with a building that contains approximately 24,000 square feet (the "Premises") together with a non-exclusive easement to use in common with others the Common Areas (as hereinafter defined) and all rights of way, alleys, easements and all other appurtenances, rights and privileges now or hereafter belonging thereto or which may be necessary or required for the use and operation of the Premises. The Premises are located in the Eagar Shopping Center (the "Shopping Center") in Apache County, Arizona. The legal description of the Shopping Center is attached hereto as Exhibit "B".

3. **Term.** Section 2 of the Lease provides:

The Term of this Lease shall commence on the date hereof and shall expire on the last day of the sixtieth (60th) full month from the Rental Commencement Date (the "Initial Term"); notwithstanding, however, if the Initial Term, or the Initial Term as extended, shall expire during the months of October, November or December of any year, then Lessee may, at its option, by written notice to Lessor not later than three (3) months prior to the expiration of the Initial Term, or three (3) months prior to the expiration of the Initial Term as extended, elect to extend the Term until the immediately following February 1st. However, if the Term, or the Term as extended, shall expire during the months of October, November or December of any year, then Lessee may, at its option, by written notice to Lessor not later than six (6) months prior to the expiration of the Term, or six (6) months prior to the expiration of the Term as extended, elect to extend the Term until the immediately following January 31.

4. Option to Extend.

Provided Lessee is not then in default at the time of exercise of an option or if in default, said default is cured, Lessee shall have one (1) option to extend the Term of this Lease for a period of five (5) years. The five (5) year period is hereafter called a "Renewal Period". Said option may be exercised by Lessee giving notice to Lessor not less than one hundred eighty (180) days prior to the expiration of the then unexpired Term. The terms and conditions of this Lease shall remain unchanged through the Renewal Period.

5. Restrictions.

(a) So long as the Premises are used for a supermarket, no portion of the Shopping Center other than the Premises shall be occupied or used, directly or indirectly (i) for the purposes of a general food market or grocery store, nor for the sale to the general public of fresh or frozen meat or fish, fresh or frozen poultry, fresh or frozen produce or dairy products, fruits, vegetables, bakery goods, cheese or lunch meats sold in bulk form or any combination thereof, (ii) for the purpose of a bakery or a delicatessen, or (iii) for the sale of liquor and/or wine and /or other alcoholic beverage for off premises consumption, without the prior written consent of the Lessee, which consent may be given or withheld at the Lessee's sole and absolute discretion. In addition, so long as a portion of the Premises is operated as a delicatessen, and for a period of one (1) year after the cessation of such operation, no portion of the Shopping Center, other than the Premises, shall be used for a sit-down or take-out facility whose primary products for sale at retail are cheese and lunch meats, submarine sandwiches, prepared salads, or barbecued, fried or rotisserie chicken, without in each case the prior written consent of the Lessee, which consent may be given or withheld at Lessee's sole and absolute discretion.

(b) So long as the Premises are used for a supermarket, no portion of the shopping center shall be occupied or used directly or indirectly for the sale as what is presently referred to as snacks and/or "meals to go" and/or "home meal replacement" such as are presently offered by Boston Market, Foodini and Eatzie nor as a drug store or for the distribution of prescription items requiring the presence of a registered pharmacist nor for the sale of alcoholic beverages for off-premises consumption.

(c) The parties acknowledge and agree that the following activities shall be prohibited within the Shopping Center:

(i) Any auction, bankruptcy or going out of business sale.

(ii) Any advertising medium that might constitute a public or private nuisance, such as flashing lights, odors, rotating devices, loud-speakers or sound amplifiers, photographs or radio or television broadcasts in a manner which can be heard, seen or experienced outside of its Pad or its space, or create or allow any nuisance to exist on its Pad or its space.

(iii) Any unlawful purpose.

(iv) Burning of papers, trash or garbage of any kind on its Pad or its space or cause or permit any unusual and objectionable odors to emanate from its Pad or its space, except that odors which are typical of uses customarily included within a retail shopping center (for example, restaurant odors) shall not be prohibited.

(v) Parking trucks and delivery vehicles or suffering any other use thereon, so as to unreasonably interfere with the use of Common Areas, provided that parking trucks and/or delivery vehicles on the Common Areas to the rear of the In-Line Parcel shall be permitted.

(vi) None of the following uses shall be conducted anywhere within the Shopping Center: massage parlor, adult book store, adult video, cocktail lounge, bar, a night club, the following places of recreation: bowling alleys, gyms, pool halls, skating rinks, bingo parlors, video and pinball arcades and health spas (including dance or aerobic studios) day spas, churches and other religious institutions. In addition, no portion of the Shopping Center shall be used as a training or educational facility which will include without limitation a beauty school, barber college, charter school(s), alternative education center(s), pre-school, day care facilities, reading room except in conjunction with a bookstore, place of instruction or other operation catering primarily to students or trainees as opposed to customers.

(vii) In addition, no part of the Shopping Center shall be used as a funeral home or for production, manufacturing, industrial, or storage use of any kind or nature except for storage and/or production of products incidental to the retail sale thereof from the Shopping Center, nor may any portion of the Shopping Center be used as a thrift store or flea market, other than a consignment store.

(d) Lessee shall have the sole and exclusive right to dispense distilled and/or purified water from vending machines located within the Common Area of the Shopping Center. Lessee shall be entitled to install within the Common Area of the Shopping Center such other vending machines, as Lessee may deem appropriate. Further, Lessee shall have the right to install pay telephones within the Common Area of the Shopping Center.

(e) There shall be no additional buildings or improvements constructed in the Shopping Center nor shall there be any changes to the Common Area within the Shopping Center without the prior written consent of Lessee which may be given or withheld by Lessee in its sole and absolute discretion provided, however, that Lessee hereby acknowledges that subject to compliance with the parking requirements as hereinafter set forth, no more than 5,000 square feet of retail space located in one (1) building only may be constructed and occupied in Building Envelope A as reflected on the site plan attached hereto as **Exhibit "A"** and no more than 5,000 square feet of retail space, fast food or sit-down waiter/waitress served restaurant in one (1) building only may be constructed and occupied in a building constructed within Building Envelope B as reflected on the site plan attached hereto as **Exhibit "A"**. Construction and occupancy as heretofore set forth is permitted if, and only if, the following minimum parking ratios are maintained with respect to the total of the Shopping Center:

Retail Parking Ratio – 5 to 1

Fast Food and Non-Retail – 10 to 1

Sit Down Restaurant – 15 to 1

The minimum width of each new parking space shall not be less than 10 feet or as required by code, whichever is greater. The location of new parking and/or drive aisles are subject to the approval of Lessee which will not unreasonably be withheld. The height of any building constructed within Building Envelope A or Building Envelope

B shall not exceed 18 feet.

(f) Should any one or more of the restrictions set forth above in this Section 31 be violated, then in addition to any other right or remedy which Lessee may have at law, in equity or pursuant to the provisions of this Lease, the monthly installments of Percentage Rent and all other charges, if any, otherwise payable by Lessee to Lessor, are subject to abatement in accordance with the following schedule, up to and including the day on which the violation no longer exists. The schedule is as follows:

(i) In the event the Lessor has by its act or omission caused or permitted the violation of one or more of the restrictions to occur, then Lessor shall have a period for thirty (30) days from the date of Lessee's notice to cause the violation(s) to no longer exist, and in the event the violation continues to exist on the thirtieth (30th) day after the date of written notice, then one hundred percent (100%) of each monthly installment of Percentage Rent and other charges, if any, otherwise payable by Lessee to Lessor, shall abate until the violation no longer exists; and

(ii) In the event an occupant of space within the Shopping Center, in violation of its Lease, causes a violation of one or more of the restrictions, then Lessor shall have a period of thirty (30) days from the date of Lessee's notice to either cause the violation to no longer exist or to commence legal action in a court of competent jurisdiction to cause the violation to cease to exist. In the event Lessor commences legal action to cause the violation to cease to exist, Lessor shall use commercially reasonable efforts to prosecute the litigation to conclusion. If at the expiration of thirty (30) days from the date of Lessee's notice the violation(s) continues to exist and Lessor has failed to commence legal action or if commenced, has failed to use commercially reasonable efforts to prosecute the legal action in order to cause the violation to cease then the violation will be deemed a Lessor violation and the provisions of **Section 5 (j)(i)** above shall apply.

6. General Provisions.

(a) All of the provisions contained in the Lease shall be binding on and insure to the benefit of the heirs, personal representatives, successors and assigns of the parties hereto.

(b) Each easement, covenant and restriction on a parcel or a pad shall be a burden on the Shopping Center, shall run with the land and shall be binding on Lessor, Lessee, their heirs, personal representatives, successors and assigns of the parties hereto.

(c) In the event of any violation or threatened violation by any person of any of the easements, covenants or restrictions contained in the Lease or this Memorandum thereof, Lessor and Lessee shall each have the right to enjoin such violation or threatened violation in a court of competent jurisdiction. The right of injunction shall be in addition to all other remedies set forth in the Lease.

(d) If any term, covenant, condition or agreement of the Lease or the application of it to any person or circumstance shall to any extent be invalid or unenforceable, the remainder of the Lease or the application of such term, covenant, condition or agreement to persons or circumstances, other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each term, covenant, condition or agreement of the Lease shall be valid and shall be enforced to the extent permitted by Law.

(e) The captions and headings in the Lease are for reference only and shall not be deemed to define or limit the scope or intent of any of the terms, covenants, conditions or agreements contained herein.

(f) The Lease contains the entire agreement between the parties hereto and supersedes all prior agreements, oral or written, with respect to the subject matter hereof. The provisions of the Lease shall be construed as a whole and not strictly for or against any party.

(g) In construing the provisions of the Lease and where the context so requires, the use of a gender shall include all other genders, the use of the singular shall include the plural, and the use of the plural shall include the singular.

(h) Nothing contained herein shall be deemed to be a gift or dedication of any portion of the Shopping Center to the general public or for the general public or for any purpose whatsoever, it being the intention of the parties that the Lease shall be strictly limited to and for the purposes therein expressed.

(i) The provisions of the Lease are not intended to create, nor shall they be in any way interpreted or construed to create, a joint venture, partnership or any other similar relationship between the parties.

(j) The Lease is not intended to create, nor shall it be in any way interpreted or construed to create, any third-party beneficiary rights in any person not a party hereto unless otherwise expressly provided herein.

(k) The Lease shall be construed under and in accordance with the laws of the State of Arizona.

(l) Time is of the essence in the Lease.

7. **Defined Terms.** All capitalized terms used herein shall have the same meaning for such terms as set forth in the Lease unless otherwise defined herein.

IN WITNESS WHEREOF, the parties have executed this Memorandum of Lease and Restrictive Covenants as of the day and year first above written.

LESSOR:

EAGAR MUNICIPAL PROPERTY CORPORATION,
an Arizona non-profit corporation

By: 

Its: President

LESSEE:

BASHAS' INC.,
an Arizona corporation

By: 

A.N. John Basha, Jr.

Its: Senior Vice President of Real Estate

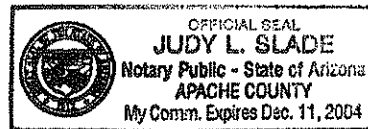
STATE OF ARIZONA)
County of Apache) ss.

The foregoing instrument was acknowledged before me on April 5, 2002, by James E. Brown the President of **Eagar Municipal Property Corporation**, an Arizona non-profit corporation, on behalf of such corporation.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Judy L. Slade
Notary Public

My Commission Expires:
Dec 11, 2004



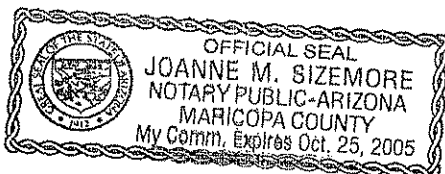
STATE OF ARIZONA)
County of Maricopa) ss.

The foregoing instrument was acknowledged before me on April 8, 2002, by A.N. John Basha, Jr., the Senior Vice President of Real Estate of Bashas' Inc., an Arizona corporation, on behalf of such corporation.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Joanne M. Sizemore
Notary Public

My Commission Expires:



**SUMMARY OF EXHIBITS ATTACHED TO
MEMORANDUM OF SHOPPING CENTER LEASE
AND RESTRICTIVE COVENANTS**

- Exhibit "A"** - Site Plan
- Exhibit "B"** - Legal Description of the Shopping Center

EXHIBIT A

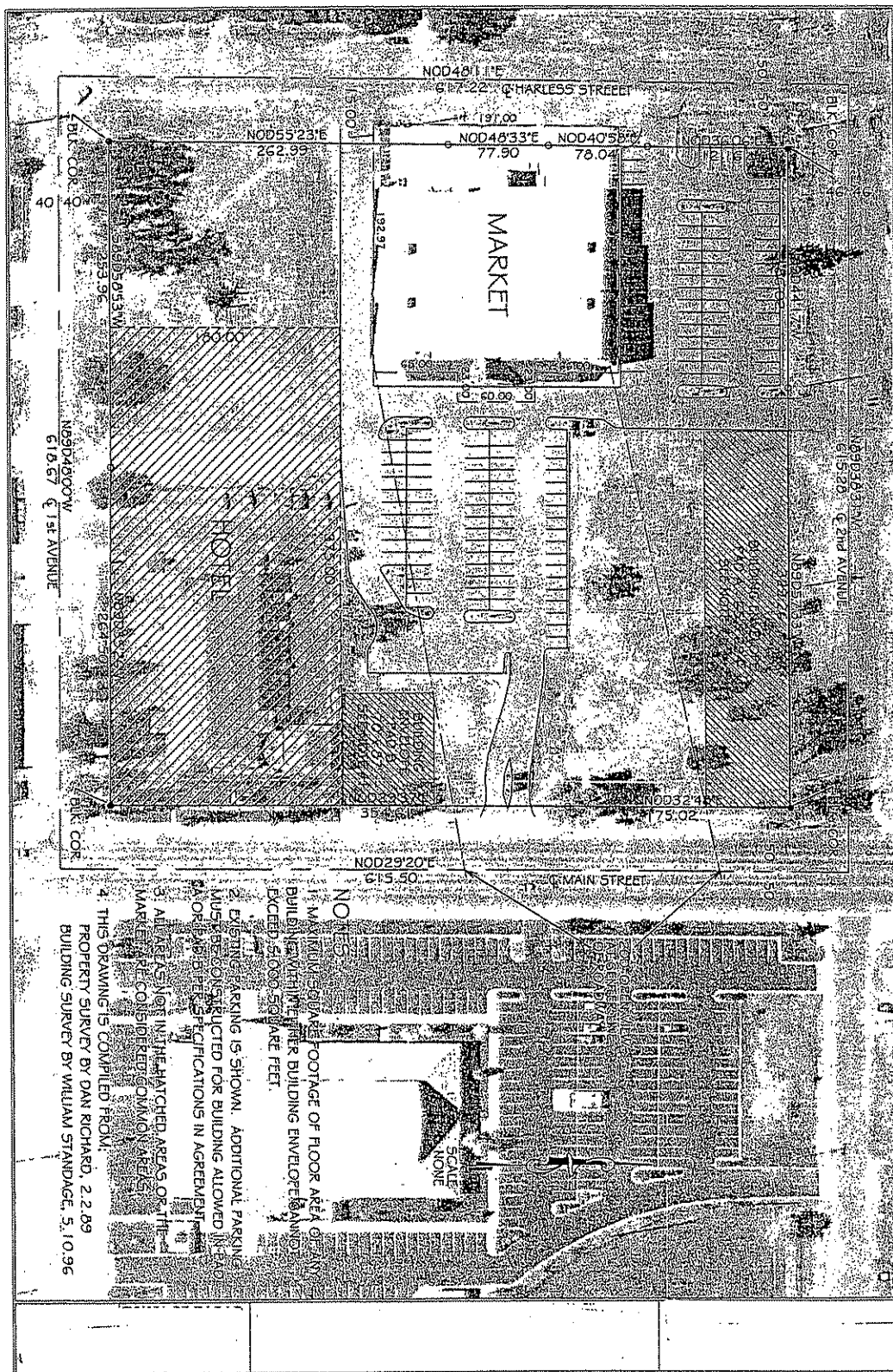


EXHIBIT "B"

Lots 1, 2, 3, 4 and 5, BLOCK 26, EAGAR TOWNSITE, according to Book 1 of Townsite Maps, Page 29, Records of Apache County, Arizona

EXCEPT the following described parcel of land:

The South 180 feet of the East 375 feet of BLOCK 26, EAGAR TOWNSITE, according to Book 1 of Townsite Maps, Page 29, Records of Apache County, Arizona, being a portion of Lots 4 and 5, BLOCK 26, EAGAR TOWNSITE.

AND

East 15 feet of Harless Street adjoining Block 26, EAGAR TOWNSITE lying between First and Second Avenues in EAGAR TOWNSITE according to Book 1 of Townsite Maps., Page 29, Records of Apache County, Arizona.

EXHIBIT "C"

WHEN RECORDED RETURN TO:

Mohr, Hackett, Pederson, Blakley
& Randolph, P.C.
2800 N. Central, Suite 1100
Phoenix, Arizona 85004-1043
Attention: Gordon A. Mohr, Esq.
Legal Notices No. 286-913

NON-DISTURBANCE AND ATTORNMENT AGREEMENT REAL PROPERTY

THIS AGREEMENT is made and entered into as of April 8, 2002, by and between Bill C. Johnson and Julie Ann Johnson, husband and wife (collectively, the "**Beneficiary**"), whose address is Post Office Box 992, Springerville, Arizona 85938, and **BASHAS' INC.**, an Arizona corporation (the "**Lessee**"), whose address is Post Office Box 488, Chandler, Arizona 85244.

RECITALS

1. Beneficiary is the owner and holder of a certain promissory note in the original principal sum of Nine Hundred Ninety Nine Thousand Five Hundred Dollars (\$995,500.00) secured by a deed of trust, assignment of rents and security agreement (the "**deed of trust**") recorded on January 14, 2000 at Docket No. 972, page 169, records of Apache County, Arizona and assigned pursuant to that certain Assignment of Beneficial Interest under Deed of Trust recorded on March 15, 2002 in Instrument Number 2002-02566. The deed of trust constitutes a lien or encumbrance on that real property more particularly described on **Exhibit "A"** attached hereto and by this reference incorporated herein.

2. Lessee is or will be the holder of a leasehold estate, which leasehold estate is a part of the real property described on **Exhibit "A"**, which leasehold estate is identified both by hatch marks on the main store premises and by a reference to "Market" in **Exhibit "B"** attached hereto and by this reference incorporated herein (the "**Leased Premises**"), pursuant to the terms of the lease (the "**Lease**") dated April 8, 2002, by and between Eagar Municipal Property Corporation, an Arizona non-profit corporation, as Lessor, and Lessee.

3. Lessee and Beneficiary desire to confirm their understanding with respect to the lease and the deed of trust.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, the parties hereto agree and covenant as follows:

1. So long as Lessee is not in default (beyond any period given Lessee to cure such default) in the payment of rent or in the performance of any of the terms, covenants or conditions of the lease to be performed by Lessee, Beneficiary shall not disturb or interfere with Lessee's possession and occupancy of the Leased Premises during the Term of the lease or any extension thereof duly exercised by Lessee.

EXHIBIT "C"

2. If the interests of Lessor shall be acquired by Beneficiary by judicial foreclosure, private trustee sale or any other manner, and Beneficiary succeeds to the interest of Lessor under the lease, Lessee shall be bound to Beneficiary and Beneficiary shall be bound to Lessee, except as provided in **Paragraph 3** below, under all of the terms, covenants and conditions of the lease for the balance of the Term thereof remaining, and any extension thereof duly exercised by Lessee, with the same force and effect as if Beneficiary were the lessor under the lease. Lessee hereby attorns to Beneficiary as its lessor. The attornment and the nondisturbance shall be effective and self-operative without the execution of any further instruments by any of the parties hereto immediately upon Beneficiary's succeeding to the interest of Lessor under the lease.

3. If the interests of Lessor shall be acquired by Beneficiary by judicial foreclosure, private trustee sale or any other manner, and Beneficiary succeeds to the interest of Lessor under the lease, Beneficiary shall not be:

a. Liable for any act or omission of Lessor.

b. Subject to any offsets (except thus expressly permitted under the Lease) or defenses which Lessee may have against any prior Lessor, unless Lessee has given written notice of the state of fact or circumstances under which such offset or defense arose to Beneficiary (whether or not such then Beneficiary elected to cure or remedy such condition).

c. Bound by any amendment or modification of the lease which reduces the rent, changes the Term or otherwise materially alters the obligation of Lessor or Lessee made without Beneficiary's written approval which approval will not unreasonably be withheld, delayed, or conditioned and will be conclusively presumed to have been given unless Lessee shall have received written notice of objection specifying in detail Beneficiary's objection and the basis therefore, within fifteen (15) days after the date of Lessor or Lessee's written request for Beneficiary's approval.

4. Notwithstanding the provisions set forth in this Subordination, Non-Disturbance and Attornment Agreement which may be expressly or by necessary implication to the contrary, the parties specifically acknowledge and agree that Beneficiary is not assuming any liability, duty or responsibility under **Section 33**, entitled "**Hazardous Material**" and under no circumstances will Beneficiary be deemed bound by the indemnification provisions set forth in **Section 33(b)(ii)**, nor shall Beneficiary be benefited by the indemnification provisions of Lessee set forth in **Section 33(c)(ii)**.

5. The lien of the deed of trust shall not encumber any trade fixtures, inventory, equipment or other property, which is and remains the property of Lessee and is removable by Lessee pursuant to the terms of the lease.

6. The rights, duties and obligations with respect to the disposition of condemnation proceeds and insurance proceeds shall in all respects be governed by the terms of the lease and not by the terms of the deed of trust.

7. The lease is now, and shall at all times continue to be, subject and subordinate in each and every respect to the deed of trust and to any and all renewals, modifications, extensions, substitutions, replacements and/or consolidations of the deed of trust except as specifically set forth herein to the contrary.

EXHIBIT "C"

8. Lessee shall give written notice to Beneficiary of any failure by Lessor to perform or observe any of the terms, conditions or agreements in the lease and Beneficiary shall have the right, but not the obligation, to cure such failure within the grace period provided Lessor or Beneficiary under the lease.

9. All notices required or permitted to be given hereunder shall be in writing and may be given in person or by United States mail, by delivery service or by electronic transmission. Any notice directed to a party to this agreement shall become effective upon the earliest of the following: (i) actual receipt by that party; (ii) delivery to the designated address of that party, addressed to that party; or (iii) if given by certified or registered United States mail, seventy-two (72) hours after deposit with the United States Postal Service, postage prepaid, addressed to that party at its designated address. The designated address of a party shall be the address of that party shown at the beginning of this agreement or such other address as that party, from time to time may specify by notice to the other parties. A copy of any notice to Lessee shall also be sent to **Mohr, Hackett, Pederson, Blakley & Randolph, P.C., 2800 North Central Avenue, Suite 1100, Phoenix, Arizona 85004-1043, Attn: Gordon A. Mohr, Esq., Legal Notices No. 286-913.**

10. The term "**Beneficiary**" shall be deemed to include the party executing this document as the Beneficiary and its successors and assigns, including any one who shall have succeeded to Lessor's interest by or through judicial foreclosure, private trustee's sale, or other proceedings brought pursuant to the deed of trust or deed in lieu of such foreclosure or proceedings.

11. This agreement may not be modified orally or in any other manner than by an agreement in writing signed by the parties hereto or their respective successors in interest. This agreement shall inure to the benefit of and be binding upon the parties hereto, their successors and assigns.

12. Each covenant, condition and provision of this agreement shall be interpreted in such manner as to be effective and valid under applicable law but if any covenant, condition or provision of this agreement shall be held to be void or invalid, the same shall not affect the remainder hereof which shall be effective as though the void or invalid covenant, condition or provision had not been contained herein.

13. This agreement may be executed in any number of counterparts and each counterpart executed by any of the undersigned, together with all other counterparts so executed, shall constitute a single instrument and agreement of the parties.

EXHIBIT "C"

IN WITNESS WHEREOF, the parties hereto have executed this agreement on the dates their signatures have been notarized to be effective as of the day and year first above written.

BENEFICIARY:

Bill C. Johnson

Bill C. Johnson
Bill C. Johnson

Julie Ann Johnson

Julie Ann

LESSEE:

BASHAS' INC., an Arizona corporation

By Arjun Kulkarni

By

Its

50. V.P.

STATE OF ARIZONA)
) ss.
County of Apache)

The foregoing instrument was acknowledged before me on this 1 day of April, 2002, by **Bill C. Johnson**.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Judith L. Slade
Notary Public

My Commission Expires:
Dec 11, 2004

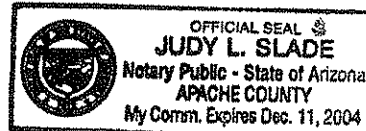


EXHIBIT "C"

STATE OF ARIZONA)
) ss.
County of Apache)

The foregoing instrument was acknowledged before me on this 2 day of April, 2002, by **Julie Ann Johnson**.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Judy L. Slade
Notary Public

My Commission Expires:
Dec 11, 2004



STATE OF ARIZONA)
) ss.
County of Maricopa)

The foregoing instrument was acknowledged before me on this 8th day of April, 2002, by A. N. John Bashas Jr., the A.V.P. of Ruth Creek of Bashas' Inc., an Arizona corporation, on behalf of such corporation.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Joanne M. Sizemore
Notary Public

My Commission Expires

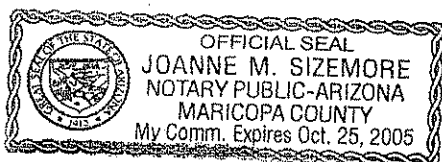


EXHIBIT "A"

Lots 1, 2, 3, 4 and 5, BLOCK 26, EAGAR TOWNSITE, according to Book 1 of Townsite Maps, Page 29, Records of Apache County, Arizona

EXCEPT the following described parcel of land:

The South 180 feet of the East 375 feet of BLOCK 26, EAGAR TOWNSITE, according to Book 1 of Townsite Maps, Page 29, Records of Apache County, Arizona, being a portion of Lots 4 and 5, BLOCK 26, EAGAR TOWNSITE.

AND

East 15 feet of Harless Street adjoining Block 26, EAGAR TOWNSITE lying between First and Second Avenues in EAGAR TOWNSITE according to Book 1 of Townsite Maps., Page 29, Records of Apache County, Arizona.

EXHIBIT B

